



2018 TAX LAW CHANGES



**OFFICE OF THE ASSISTANT SECRETARY
FOR TAX ADMINISTRATION**

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PREFACE

The 2018 legislative session brought many changes to the Revenue laws and the North Carolina Department of Revenue. **The 2018 Tax Law Changes** is designed for use by the North Carolina Department of Revenue personnel and is available to others as a resource document. It provides a brief summary of legislative tax changes made by prior General Assemblies that take effect for tax year 2018 as well as changes made by the 2018 General Assembly, regardless of effective date. This document includes changes to the tax law only and not other legislation that affect the Department of Revenue.

For further information on a specific tax law change, refer to the governing legislation. Administrative rules, bulletins, directives, and other instructions issued by the Department, as well as opinions issued by the Attorney General's Office, may provide additional information on the application of tax law change. I hope you find this information of value as you work with the North Carolina's tax laws.

Anthony Edwards
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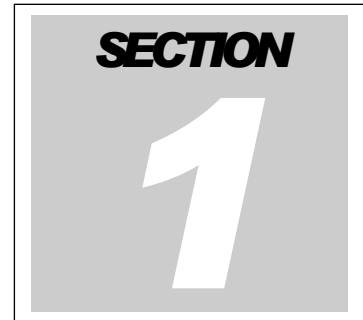
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PERSONAL TAXES



INDIVIDUAL INCOME TAX – ARTICLE 4, PART 2

G.S. 105-153.5(a)(1) – Standard Deduction Amount: The 2016 General Assembly and the 2017 General Assembly amended this subdivision to increase the standard deduction amount for each filing status as reflected in the tables below:

For taxable years beginning on or after January 1, 2017, and before January 1, 2019, the standard deduction amount for each filing status is as follows:

Filing Status	Standard Deduction
Married, filing jointly/surviving spouse	\$17,500
Head of Household	\$14,000
Single	\$ 8,750
Married, filing separately	\$ 8,750

For taxable years beginning on or after January 1, 2019, the standard deduction amount for each filing status is as follows:

Filing Status	Standard Deduction
Married, filing jointly/surviving spouse	\$20,000
Head of Household	\$15,000
Single	\$10,000
Married, filing separately	\$10,000

(The 2016 General Assembly amendment effective for taxable years beginning on or after January 1, 2017 and before January 1, 2019; HB 1030, s. 38.1(b), S.L. 2016-94. The 2017 General Assembly amendment effective for taxable years beginning on or after January 1, 2019; SB 257, s. 38.2(a), S.L. 2017-57.)

G.S. 105-153.5(a)(2) – Itemized Deduction Amount: The Bipartisan Budget Act of 2018, enacted by Congress in February 2018, extended through tax year 2017 the federal provision that allows an individual an itemized deduction for mortgage insurance premiums paid or accrued by treating those premiums as qualified residence interest. North Carolina has historically decoupled from this provision of the Internal Revenue Code. Sub-subdivision (b) was amended to extend the provision originally enacted effective for taxable years beginning on or after January 1, 2014, that caused North

Carolina to decouple from the Internal Revenue Code with respect to mortgage insurance premiums. As amended, an individual is not allowed a North Carolina itemized deduction for mortgage insurance premiums paid during the year and treated as qualified residence interest under the Code for tax year 2017.

(Effective June 12, 2018; SB 99, s. 38.1(c), S.L. 2018-5.)

G.S. 105-153.5(a1) – Child Deduction Amount: The 2017 General Assembly amended G.S. 105-153.5 to add new subsection (a1) which allows a taxpayer a deduction for each dependent child for whom the taxpayer is allowed a federal child tax credit under section 24 of the Internal Revenue Code. As enacted, the deduction amount is equal to the amount listed in the table below based on the taxpayer's AGI, as calculated under the Code:

Filing Status	AGI	Deduction Amount
Married, filing jointly/Surviving spouse	Up to \$40,000	\$2,500.00
	Over \$40,000 Up to \$60,000	\$2,000.00
	Over \$60,000 Up to \$80,000	\$1,500.00
	Over \$80,000 Up to \$100,000	\$1,000.00
	Over \$100,000 Up to \$120,000	\$500.00
	Over \$120,000	\$0.00
Head of Household	Up to \$30,000	\$2,500.00
	Over \$30,000 Up to \$45,000	\$2,000.00
	Over \$45,000 Up to \$60,000	\$1,500.00
	Over \$60,000 Up to \$75,000	\$1,000.00
	Over \$75,000 Up to \$90,000	\$500.00
	Over \$90,000	\$0.00
Single/Married, filing separately	Up to \$20,000	\$2,500.00
	Over \$20,000 Up to \$30,000	\$2,000.00
	Over \$30,000 Up to \$40,000	\$1,500.00
	Over \$40,000 Up to \$50,000	\$1,000.00
	Over \$50,000 Up to \$60,000	\$500.00
	Over \$60,000	\$0.00

(Effective for taxable years beginning on or after January 1, 2018; SB 257, s. 38.4(a), S.L. 2017-57.)

G.S. 105-153.5(b) – Other Deductions: The 2017 General Assembly and the 2018 General Assembly amended this subsection to add two new subdivisions. Both amendments allow a taxpayer to deduct an item of income from the calculation of North Carolina taxable income only if the income item was included in the taxpayer’s calculation of federal adjusted gross income.

Subdivision (12) was added to provide a deduction from federal adjusted gross income for the amount deposited during the taxable year to a personal education savings account (“PESA”) under Article 39A of Chapter 115C of the General Statutes, “Personal Education Savings Accounts.”

Subdivision (13) was added to allow a deduction from federal adjusted gross income for the amount paid to a taxpayer during the taxable year from the State Emergency Response and Disaster Relief Reserve Fund for hurricane relief or assistance. A taxpayer may not deduct any payment made to the taxpayer for goods or services provided by the taxpayer.

(The 2017 General Assembly amendment effective for taxable years beginning on or after January 1, 2018; SB 257, s. 10A.4(b), S.L. 2017-57. The 2018 General Assembly amendment effective for taxable years beginning on or after January 1, 2017; SB 99, s. 5.6(j), S.L. 2018-5.)

G.S. 105-153.5(c) – Additions: This section was amended twice as a result of significant changes made to the Internal Revenue Code by the Tax Cuts and Jobs Act (“TCJA”) passed in December 2017.

Subdivision (4) of G.S. 105-153.5(c), which required an addition to federal adjusted gross income for gross income from domestic production activities that a taxpayer excluded from federal taxable income under section 199 of the Internal Revenue Code, was repealed. TCJA repealed section 199 of the Code making this adjustment no longer necessary.

Subdivision (7) was amended to enable North Carolina individuals to take full advantage of the expanded benefits permitted under IRC section 529, as amended by TCJA. As amended, federal law allows a participant in a 529 plan to withdraw funds to pay for tuition in connection with a beneficiary’s enrollment at an elementary or secondary public, private, or religious school. In addition, federal law now allows an existing 529 saving plan to be rolled into a 529 ABLE account.

Prior to taxable years beginning on or after January 1, 2014, contributions made to a North Carolina 529 plan were deductible in determining an individual’s State taxable income. The 2016 General Assembly amended G.S. 105-153.5(c)(7) to require a taxpayer to add to adjusted gross income the amount of funds withdrawn from a North Carolina 529 plan if the amount withdrawn was not used for qualified higher education

expenses to the extent the amount was deducted from State taxable income in a prior taxable year.

The General Assembly made the necessary conforming changes to G.S. 105-153(c)(7) to avoid penalizing an individual who took the State income tax deduction for contributions to a NC 529 Plan while the deduction was in effect. As rewritten, an individual does not have to add to federal adjusted gross income the amount of funds withdrawn if the funds are used for a purpose allowed under section 529 of the Code, as amended in the TCJA.

(First amendment is effective for taxable years beginning on or after January 1, 2018; SB 99, s. 38.1(f), S.L. 2018-5; second amendment is effective for taxable years beginning on or after January 1, 2018; SB 99, ss. 38.1(h), S.L.2018-5.)

G.S. 105-153.5(c2) – Decoupling Adjustments: The Tax Cuts and Jobs Act and the Bipartisan Budget Act of 2018 (collectively, “federal tax provisions”) made significant changes to the federal individual income tax. To the extent North Carolina follows the Internal Revenue Code, the federal tax provisions apply to North Carolina for purposes of calculating an individual’s State tax liability. Subsection (c2) was amended to make the necessary adjustments to decouple North Carolina from federal provisions that North Carolina does not follow.

The Bipartisan Budget Act of 2018 retroactively extended through tax year 2017 the following provisions:

- The exclusion from income for the discharge of qualified principal residence indebtedness, and
- The deduction in arriving at federal adjusted gross income for qualified tuition and related expenses as amended

Subdivision (1) of subsection (c2) requires an individual to add to federal adjusted gross income for tax year 2017 the amount excluded from the taxpayer’s gross income for the discharge of qualified principal residence indebtedness under section 108 of the Code. Subdivision (2) requires an individual to add to federal adjusted gross income for tax year 2017 the amount of qualified tuition and related expenses deducted from the taxpayer’s adjusted gross income.

The federal Tax Cuts and Jobs Act included a provision that provides a tax benefit to a qualified investor who invests capital gains into a qualified opportunity fund as defined under section 1400Z-2 of the Code. Subsection (c2) was further amended to add three new subdivisions to decouple North Carolina from the Internal Revenue Code with respect to the tax changes associated with investing in these zones.

New subdivision (5) requires an individual to add to federal adjusted gross income the amount of gain temporarily excluded from the taxpayer’s gross income under section 1400Z-2 of the Code because the gain was reinvested into a qualified opportunity fund

as defined under the Code. The adjustment made to federal adjusted gross income does not result in a difference in basis of the affected assets for State and federal income tax purposes.

New subdivision (6) allows an individual to deduct the amount of gain included in federal adjusted gross income under section 1400Z-2 of the Code to the extent the same income was included in the taxpayer's North Carolina taxable income in a prior tax year.

New subdivision (7) requires an individual to add to federal adjusted gross income the amount of gain permanently excluded from the taxpayer's gross income under section 1400Z-2 of the Code because the gain was accrued from the sale or exchange of an investment in an Opportunity Fund held for at least 10 years.

(Effective June 12, 2018; SB 99, s. 38.1(c), S.L. 2018-5.)

G.S. 105-153.7(a) – Individual Income Tax Imposed: This subsection was amended twice; once by the 2015 General Assembly and again by the 2017 General Assembly. Both amendments decreased the income tax rate imposed on an individual's North Carolina taxable income.

The 2015 General Assembly amended this subsection to reduce the individual income tax rate for tax years beginning on or after January 1, 2017 from 5.75% to 5.499%. The 2017 General Assembly further reduced the individual income tax rate for taxable years beginning on or after January 1, 2019 from 5.499% to 5.25%.

(The 2015 General Assembly amendment was effective for taxable years beginning on or after January 1, 2017 and before January 1, 2019; HB 97, s. 32.16(c), S.L. 2015-241. The 2017 General Assembly amendment is effective for taxable years beginning on or after January 1, 2019; SB 257, s. 38.1(a), S.L. 2017-57.)

G.S. 105-153.8(a) – Who Must File: Subdivisions (1) and (2) of this subsection were amended to decouple North Carolina's filing requirement from the federal filing requirement. Under prior law, an individual's obligation to file a state income tax return was tied to the individual filing requirements under the Internal Revenue Code. After the enactment of the federal Tax Cuts and Jobs Act in December 2017, the federal standard deduction amount is larger than the North Carolina standard deduction amount. As amended, taxpayers with income less than the federal standard deduction amount but more than the North Carolina standard deduction amount are required to file a North Carolina tax return.

As amended and specifically stated in G.S. 105-153.8(a)(1), **a resident individual** is required to file a North Carolina individual income tax return if the taxpayer's gross income under the Code exceeds the North Carolina standard deduction. Subdivision

(2) requires a **nonresident individual** to file a North Carolina individual income tax return if the taxpayer's gross income under the Code exceeds the North Carolina standard deduction and the taxpayer received North Carolina sourced income.

(Effective for taxable years beginning on or after January 1, 2018; SB 99, s. 38.1(g), S.L. 2018-5.)

G.S. 105-153.10 – Credit for Children: This section was repealed by the 2017 General Assembly as part of the changes made to modify and expand the child tax deduction. Prior to repeal, G.S. 105-153.10 provided a taxpayer with a tax credit of up to \$125 per child, depending on the taxpayer's filing status and amount of adjusted gross income, if the taxpayer was allowed a federal tax credit under section 24 of the Internal Revenue Code.

With the repeal of G.S. 105-153.10 and the enactment of G.S. 105-153.5(a1), a taxpayer is allowed a deduction for each dependent child for whom the taxpayer is allowed a federal child tax credit under section 24 of the Internal Revenue Code. For more information on the child deduction, including the amount of the child deduction, see **G.S. 105-153.5(a1) - Child Deduction Amount**, earlier in this publication.

(Effective for taxable years beginning on or after January 1, 2018; SB 257, s. 38.4(b), S.L. 2017-57.)

G.S. 105-159 – Federal Determinations and Amended Returns: This section was amended as part of a series of changes to the State's federal corrections statutes, which are statutes that address a taxpayer's obligation when the taxpayer's federal taxable income is changed or corrected at the federal level and the change affects the amount of State tax payable. Specifically, the changes create a distinction between situations where the changes are a result of an action initiated by the Internal Revenue Service and situations where the changes are the result of an amended return voluntarily filed by a taxpayer.

The existing language in G.S. 105-159 was placed in new subsection (a) and was rewritten to clarify when a taxpayer must notify the Secretary of a federal determination that affects the amount of State tax payable. Subsection (a) also incorporates a cross-reference to a new definition of "federal determination" in G.S. 105-228.90 and makes other stylistic changes.

New subsection (b) was added to provide guidance to taxpayers who voluntarily file amended returns with the Internal Revenue Service and the adjustments affect State tax payable. New subdivision (b)(1) provides that if a taxpayer voluntarily files an amended federal return and the adjustment increases State tax payable, the taxpayer **must** file a State amended return within six months of filing the federal amended return. New subdivision (b)(2) provides that if a taxpayer voluntarily files an amended federal return and the adjustment decreases State tax payable, the taxpayer may file a State amended return within the general statute of limitations for obtaining a refund.

New subsection (c) was added to impose penalties against a taxpayer who fails to file a required amended State return within the timeframes set within G.S. 105-159.

(Effective June 12, 2018 and applies to federal amended returns filed on or after that date; SB 99, s. 38.3(b), S.L. 2018-5.)

WITHHOLDING TAX – ARTICLE 4A

G.S. 105-163.1 – Definitions: Subdivision (13) of this section was amended to define "wages" for North Carolina withholding purposes. As rewritten, wages has the same meaning as defined under IRS section 3401. The definition no longer excludes employer reimbursements for an employee's ordinary and necessary business expenses.

(Effective June 12, 2018; SB 99, s. 38.1(d), S.L. 2018-5.)

G.S. 105-163.6A – Federal Determinations: This section was amended to incorporate the requirements of G.S. 105-159 located in Article 4, Part 2 into the provisions of Article 4A. As amended and specifically stated in G.S. 105-159(a), if the taxes an employer is required to withhold and pay under the Internal Revenue Code is changed or corrected, the taxpayer must file a State withholding tax return reflecting each change or correction from a federal determination within six months after being notified of each change or correction. In addition, pursuant to G.S. 105-159(b), if a taxpayer voluntarily files an amended withholding tax return with the Internal Revenue Service that increases State tax payable, the taxpayer must file an amended State withholding tax return with the Department within six months of filing the federal amended return. To review the requirements of G.S. 105-159, see **G.S. 105-159 – Federal Determinations and Amended Returns** located in the Individual Income Tax section of this publication and the North Carolina General Statutes.

(Effective June 12, 2018; SB 99, s. 38.3(d), S.L. 2018-5.)

G.S. 105-163.7 – Statement to Employees; Information to Secretary: This section was amended as part of a series of changes to the State's informational return statutes.

As amended and specifically stated in G.S. 105-163.7(b), an employer must annually file an informational return with the Secretary that contains the information given on each of the employer's written statements, i.e. form W-2 or applicable 1099 statement. The Secretary is permitted to require additional information to be included on the informational return. In general, the informational return is due on or before January 31 of the succeeding year and must be filed in an electronic format as prescribed by the Secretary. If an employer terminates its business or permanently ceases paying wages, the employer must file an annual informational return with 30 days of the last wage payment.

G.S. 105-163.7 was also amended to add new subsection (d). The language in subsection (d) is not new but was relocated from G.S. 105-236(a)(10)(b).

(Effective June 12, 2018; SB 99, s. 38.10(n), S.L. 2018-5.)

INCOME TAX – ESTATES, TRUST, AND BENEFICIAIRES

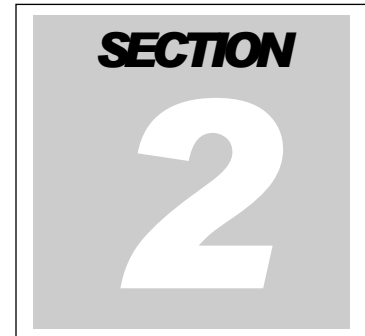
G.S. 105-160.3 – Tax Credits: Subsection (b) of this section was amended to remove the tax credit for children from the list of tax credits an estate or trust was not permitted to claim. The tax credit for children was repealed making this exception no longer necessary.

(Effective June 12, 2018; SB 99, s. 38.10(l), S.L. 2018-5.)

G.S. 105-160.8 – Federal Determinations: This section was amended to incorporate the requirements of G.S. 105-159 located in Article 4, Part 2 into the provisions of Article 4, Part 3. As amended and specifically stated in G.S. 105-160.8, the provisions of G.S. 105-159 apply to fiduciaries required to file returns for estates and trusts.

(Effective June 12, 2018 and applies to federal amended returns filed on or after that date; SB 99, s. 38.3(c), S.L. 2018-5.)

CORPORATE TAXES



FRANCHISE TAX – ARTICLE 3

G.S. 105-114(b)(2) – Definition of Corporation: This subdivision was amended to change the definition of a “corporation” for purposes of franchise tax. The annual franchise tax is imposed on corporations doing business in this State. Previously, the definition included limited liability companies that elect to be taxed as corporations but did not include partnerships that elect to be taxed as corporations. This change includes partnerships that elect to be taxed as corporations in the definition of “corporation” and makes consistent the treatment of all business entities that either are corporations or choose to be taxed as corporations. This also makes franchise tax treatment consistent with income tax treatment.

(Effective for taxable years beginning on or after January 1, 2019 and applies to the calculation of franchise tax reported on the 2018 and later corporate income tax returns; SB 99, s. 38.2(a), S.L. 2018-5.)

G.S. 105-122(b) – Determination of Net Worth: This subsection was amended to eliminate some language, add new subdivision (1b) and delete subdivision (3).

Vague language was eliminated to make clear that if a corporation does not maintain its books and records in accordance with generally accepted accounting principles (GAAP), then its net worth is computed in accordance with the method the corporation uses for federal tax purposes.

Subdivision (1b) was added so that if a corporation uses an accounting method other than GAAP for federal tax purposes, then new subdivision (1b) requires that asset valuation, depreciation, depletion, and amortization be calculated for franchise tax purposes using the same method used for federal income tax purposes.

Subdivision (3) was deleted to prevent a double deduction of treasury stock that is already captured in the current franchise tax calculation.

(Effective for taxable years beginning on or after January 1, 2019 and applies to the calculation of franchise tax reported on the 2018 and later corporate income tax returns; SB 99, s. 38.2(b), S.L. 2018-5.)

G.S. 105-122(d)(3) – Computation of Investment in Tangible Property Base: This subdivision from the reorganization of G.S. 105-122 was amended to reinstate a deduction for any indebtedness specifically incurred and existing solely for and as the result of the purchase of any real estate and any improvements made on the real estate. The deduction was previously eliminated in the 2015 General Assembly franchise tax simplification changes. With the reinstatement of the deduction, the term “specifically” was added into the phrase “indebtedness incurred” to emphasize the connection of the debt incurred specifically to the real estate purchased or improved.

(Effective for taxable years beginning on or after January 1, 2020 and applies to the calculation of franchise tax reported on the 2019 and later corporate income tax returns; SB 628, s. 1.3(b), S.L. 2017-204.)

G.S. 105-122(d2) – S-Corporation Tax Rate: This subsection from the reorganization of the G.S. 105-122 was further amended to provide a future reduction in the franchise tax rate for S-Corporations. It provides that the franchise tax rate for an S-Corporation as defined in G.S. 105-130.2 is \$200 for the first one million dollars (\$1,000,000) of the corporation’s tax base and \$1.50 per \$1,000 of its tax base that exceeds one million dollars (\$1,000,000). This rate reduction is for taxable years beginning on or after January 1, 2019 and will apply to the franchise tax reported on the 2018 and later corporate income tax returns.

(Effective for taxable years beginning on or after January 1, 2019 and applies to the calculation of franchise tax reported on the 2018 and later corporate income tax returns; SB 257, s. 38.6(a), S.L. 2017-57 and SB 628, s. 1.3(c), S.L. 2017-204.)

HISTORIC REHABILITATION TAX CREDITS – ARTICLE 3D

G.S. 105-129.39 – Sunset Date Modified for Historic Rehabilitation Tax Credit: This section was rewritten to add an expiration date of January 1, 2023 for property not placed in service by that date. The credit for historic rehabilitation under Article 3D expired for expenditures incurred on or after January 1, 2015. However, the taxpayer could not claim the credit until the property was placed in service, which could be a different taxable year than when the expenditures were actually incurred. Prior to this change, there was not an expiration date for claiming the credit for historic rehabilitation property expenses incurred before January 1, 2015.

(Effective June 12, 2018; SB 99, s. 38.10(j), S.L. 2018-5.)

HISTORIC REHABILITATION TAX CREDITS – ARTICLE 3L

G.S. 105-129.110 – Sunset Date Modified for Historic Rehabilitation Tax Credit:

This section was rewritten to add an expiration date of January 1, 2028 for property not placed in service by that date. The credit for historic rehabilitation under Article 3L expires for expenditures incurred on or after January 1, 2020. However, the taxpayer could not claim the credit until the property was placed in service, which could be a different taxable year than when the expenditures were actually incurred. Prior to this change, there was not an expiration date for claiming the credit for historic rehabilitation property expenses incurred before January 1, 2020.

(Effective June 12, 2018; SB 99, s. 38.10(k), S.L. 2018-5.)

CORPORATION INCOME TAX – ARTICLE 4, PART 1

G.S. 105-130.3 – Corporate Income Tax Rate Reduction: Effective for tax years beginning on or after January 1, 2019, the tax rate for C corporations is decreased from 3% to 2.5%.

(Effective for taxable years beginning on or after January 1, 2019; SB 257, s. 38.5(b), S.L. 2017-57.)

G.S. 105-130.4(i) – Phase-In Single Sales Factor Apportionment: The 2015 General Assembly enacted legislation to require North Carolina to phase in a single sales factor apportionment formula over a three year period, beginning in tax year 2016. Under prior law, the apportionment formula consisted of the sum of the property factor, the payroll factor, and twice the sales factor divided by four. As amended, subsection (i) of G.S. 105-130.4 is rewritten as follows:

- For taxable year 2016, the sales factor is triple weighted. As such, all apportionable income of a corporation must be apportioned to North Carolina using an apportionment formula that consists of the sum of the property factor, the payroll factor, and three times the sales factor divided by five.
- For taxable year 2017, the sales factor will be quadruple weighted. As such, all apportionable income of a corporation must be apportioned to North Carolina using an apportionment formula that consists of the sum of the property factor, the payroll factor, and four times the sales factor divided by six.
- For taxable year 2018 and thereafter, the sales factor will be the only apportionment factor.

In addition, effective January 1, 2018, the following statutory provisions related to the property and payroll factor, as well as special apportionment rules that currently allow single sales factor apportionment, are repealed because they will no longer be necessary:

- G.S. 105-130.4(a)(6) - Definition of Public Utility
- G.S. 105-130.4(a)(4) – Definition of an Excluded Corporation
- G.S. 105-130.4(j) – Property Factor
- G.S. 105-130.4(k) – Payroll Factor
- G.S. 105-130.4(r) – Special Apportionment Rule for Excluded Corporations and Public Utilities
- G.S. 105-130.4(s1) – Special apportionment Rule for a Qualified Capital Intensive Corporation.

(The amendment to triple-weight the sales factor is effective for taxable years beginning on or after January 1, 2016; HB 97, s. 32.14(a), S.L. 2015-241.)

(The amendment to quadruple-weight the sales factor is effective for taxable years beginning on or after January 1, 2017; HB 97, s. 32.14(b), S.L. 2015-241.)

(The amendment to a sales factor only apportionment formula and the repeal of the various special apportionment formulas is effective for taxable years beginning on or after January 1, 2018; HB 97, s. 32.14(c) and (d), S.L. 2015-241.)

G.S. 105-130.4(l) – Allocation and Apportionment – Sales Factor: This subsection was rewritten to codify the Department’s current practice and policy for sourcing sales to this State. Subparagraph 3(a), discussing receipts from the sale of real and tangible personal property, was rewritten to clarify that receipts from incidental services sold as part of, or in connection with, a sale of tangible personal property in this State are sourced to this State, regardless of where those services are performed. Subparagraph 3(c), discussing receipts from the sale of services, was rewritten to add the definition of “income-producing activity” already in current practice and policy. Specifically, it defines “income-producing activity” as an activity directly performed by the taxpayer or its agents for the ultimate purpose of generating the sale of the service. Additional clarifying language further provides that receipts from services, where the income-producing activity is performed within and outside this State are attributed to this State in proportion to the ratio of income producing activity performed in this State to the total income-producing activity performed everywhere.

(Effective June 12, 2018; SB 99, s. 38.2(c), S.L. 2018-5.)

G.S. 105-130.5(a)(10) – Addition to Federal Taxable Income for Tax Credits Against Corporate Income Tax: This subdivision which requires an addback to federal taxable income of the amount allowed as a credit against the taxpayer’s corporate income tax was amended to repeal a reference to G.S. 105-130.47. G.S. 105-130.47 was the tax credit for qualifying expenses of a production company that expired for qualifying expenses occurring on or after January 1, 2015.

(Effective June 12, 2018; SB 99, s. 38.2(d), S.L. 2018-5.)

G.S. 105-130.5(a)(17) – Addition to Federal Taxable Income for Amount Excluded from Gross Income Under Section 199 of the Code: This subdivision, which requires an addback to federal taxable income of the amount excluded from gross income under section 199 of the Internal Revenue Code, has been repealed. Section 199 of the Code is the domestic production activities deduction for federal taxable income and the addback was needed because North Carolina decoupled from this federal deduction in 2005. Section 199 of the Code was repealed as part of the federal Tax Cuts and Jobs Act, making this State adjustment no longer necessary.

(Effective for taxable years beginning on or after January 1, 2018; SB 99, s. 38.1(e), S.L. 2018-5.)

G.S. 105-130.5(a)(20) – Addition to Federal Taxable Income for Donation Amount Made for Which a Tax Credit is Claimed: This subdivision, which requires an addback to federal taxable income of the amount of a donation made to a nonprofit organization or a unit of State or local government for which a credit is claimed under G.S. 105-129.16H, has been repealed. G.S. 105-129.16H was the tax credit for donating funds to a nonprofit organization or a unit of State or local government to enable a nonprofit or government unit to acquire renewable energy property. It expired for donations made for renewable energy property placed in service on or after January 1, 2016 except as provided for taxpayers covered by G.S. 105-129.16A(f).

(Effective June 12, 2018; SB 99, s. 38.2(d), S.L. 2018-5.)

G.S. 105-130.5(a)(26) – Addition to Federal Taxable Income for Deferral of Gains Reinvested into a Qualified Opportunity Fund: This subdivision requires an addback to federal taxable income of the amount of gain excluded from the taxpayer's federal taxable income under IRC Section 1400Z-2 because the gain was reinvested into a qualified Opportunity Fund as defined under the Code. The purpose of this subdivision is to decouple from the deferral of gains reinvested into an Opportunity Fund available under federal law. The adjustment in this subdivision does not result in a difference in basis of the affected assets for State and federal income tax purposes.

(Effective June 12, 2018; SB 99, s. 38.1(b), S.L. 2018-5.)

G.S. 105-130.5(a)(27) – Addition to Federal Taxable Income for Permanent Excluded Gains from the Sale or Exchange of an Investment in a Qualified Opportunity Fund: This subdivision requires an addback to federal taxable income of the amount of gain permanently excluded from the taxpayer's federal taxable income under IRC Section 1400Z-2 because the gain was accrued from the sale or exchange of an investment in an Opportunity Fund held for at least 10 years. The purpose of this subdivision is to decouple from the exclusion of gains from the sale or exchange of an investment in an Opportunity Fund available under federal law.

(Effective June 12, 2018; SB 99, s. 38.1(b), S.L. 2018-5.)

G.S. 105-130.5(a)(28) – Addition to Federal Taxable Income for Deductions Associated with Foreign Derived Intangible Income and Global Intangible Low-Taxed Income: This new subdivision requires a taxpayer to add to federal taxable income the amount deducted pursuant to IRC Section 250. As part of the Tax Cuts and Jobs Act, IRC Section 250 allows deductions of percentages of foreign derived intangible income and global intangible low-taxed income. The purpose of this subdivision is to decouple from the deductions available under federal law.

(Effective June 12, 2018; SB 99, s. 38.1(b), S.L. 2018-5.)

G.S. 105-130.5(a)(29) – Addition to Federal Taxable Income for Deductions Associated with IRC Section 965 Repatriation Income: This new subdivision requires an addback to federal taxable income of the amount deducted pursuant to IRC Section 965(c). As part of the Tax Cuts and Jobs Act, IRC Section 965(c) allows deductions for a portion of the IRC Section 965 repatriation income that reduces the overall tax rate for federal income tax purposes. The purpose of this subdivision is to decouple from the deductions available under federal law.

(Effective June 12, 2018; SB 99, s. 38.1(b), S.L. 2018-5.)

G.S. 105-130.5(b)(3b) – Deduction from Federal Taxable Income for Amount Associated with IRC Sections 951A and 965 Repatriation Income: This subdivision was amended to allow a corporation a deduction from federal taxable income for the amount included in federal taxable income under IRC Sections 951A and 965, net of related expenses. These sections were added as part of Tax Cuts and Jobs Act. IRC Section 951A requires United States shareholders of any foreign controlled corporations to include its global intangible low-taxed income in its federal taxable income for the year. IRC Section 965 requires taxpayers with untaxed foreign earnings and profits to pay a tax as if those earnings and profits had been repatriated to the United States. Previously, this subdivision only allowed deductions for amounts included in federal taxable income under IRC Sections 78 and 951, net of related expenses but these IRC Sections were added to this subdivision to be consistent with treatment of other similar income.

(Effective June 12, 2018; SB 99, s. 38.1(b), S.L. 2018-5.)

G.S. 105-130.5(b)(29) – Deduction from Federal Taxable Income for Amount Paid from the State Emergency Response and Disaster Relief Reserve Fund: This new subdivision was added to allow a corporation a deduction from federal taxable income for the amount paid to a taxpayer during the taxable year from the State Emergency Response and Disaster Relief Reserve Fund for hurricane relief or assistance to the extent included in federal taxable income. A taxpayer may not deduct any payment made to the taxpayer for goods or services provided by the taxpayer.

(Effective for taxable years beginning on or after January 1, 2017; SB 99, s. 5.6(k), S.L. 2018-5.)

G.S. 105-130.5(b)(30) – Deduction from Federal Taxable Income for Deferral of Gains Reinvested into a Qualified Opportunity Fund: This new subdivision was added to allow a deduction from federal taxable income of the amount of gain included in the taxpayer’s federal taxable income under IRC Section 1400Z-2 to the extent the same income was included in the taxpayer’s North Carolina taxable income in a prior tax year. The purpose of this subdivision is to prevent double taxation of income the taxpayer was previously required to include in the calculation of State net income.

(This subdivision was recodified from the original Session Law.)

(Effective June 12, 2018; SB 99, s. 38.1(b), S.L. 2018-5.)

G.S. 105-130.11(b)(4) – Unrelated Business Income Limitation: This new subdivision was added to limit the unrelated business taxable income of an organization that is exempt from federal income tax under IRC Section 501(c)(3) as it relates to qualified parking facilities. As part of the Tax Cuts and Jobs Act, IRC Section 512(a)(7) requires tax exempt organizations to increase their unrelated business taxable income by any amount paid or incurred by the organization for any qualified transportation fringe benefits, any parking facility used in connection with qualified parking, or any on-site athletic facilities. The purpose of this subdivision is to decouple from the Tax Cuts and Jobs Act increase only as it relates to parking facilities.

(Effective for taxable years beginning on or after January 1, 2018; SB 99, s. 38.2(i), S.L. 2018-5.)

G.S. 105-130.20 – Federal Corrections: This section was amended as part of a series of changes to the State’s federal corrections statutes, which address a taxpayer’s obligation when the taxpayer’s federal taxable income is changed or corrected at the federal level and the change affects the amount of State tax payable. Specifically, the changes create a distinction between situations where the changes are a result of an action initiated by the Internal Revenue Service and situations where the changes are the result of an amended return voluntarily filed by a taxpayer.

The existing language in G.S. 105-130.20 was placed in new subsection (a) and was rewritten to clarify when a taxpayer must notify the Secretary of a federal determination that affects the amount of State tax payable. Subsection (a) also incorporates a cross-reference to a new definition of “federal determination” in G.S. 105-228.90 and makes other stylistic changes.

New subsection (b) was added to provide guidance to taxpayers who voluntarily file amended returns with the Internal Revenue Service and the adjustments affect State tax payable. New subdivision (b)(1) provides that if a taxpayer voluntarily files an amended federal return and the adjustment increases State tax payable, the taxpayer **must** file a State amended return within six months of filing the federal amended return.

New subdivision (b)(2) provides that if a taxpayer voluntarily files an amended federal return and the adjustment decreases State tax payable, the taxpayer may file a state amended return within the general statute of limitations for obtaining a refund.

New subsection (c) was added to impose penalties against a taxpayer who fails to file a required amended State return within the timeframes set within G.S. 105-130.20.

(Effective June 12, 2018 and applies to federal amended returns filed on or after that date; SB 99, s. 38.3(a), S.L. 2018-5.)

INSURANCE GROSS PREMIUMS TAX – ARTICLE 8B

G.S. 58-6-25 – Insurance Regulatory Charge: The percentage rate to be used in calculating the insurance regulatory charge under this statute is six and one-half percent (6.5%) for the 2018 and 2019 calendar years. This charge is a percentage of gross premiums tax liability.

(Effective June 12, 2018; SB 99, s. 22.2, S.L. 2018-5.)

G.S. 105-228.3 – Definitions: This section was amended to add subsection (1b) which is the definition of a “foreign captive insurance company.” A “foreign captive insurance company” is defined as a captive insurance company as defined in G.S. 58-10-340(9), except that such company is not formed or licensed under the laws of this State but is formed and licensed under the laws of any jurisdiction within the United States other than this State.

(Effective June 12, 2018; SB 99, s. 38.2(e), S.L. 2018-5.)

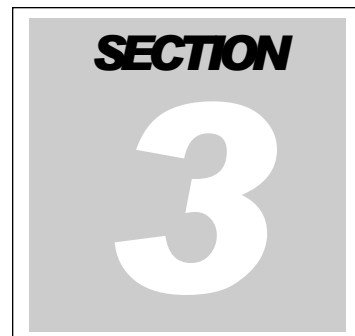
G.S. 105-228.4A – Tax on Captive Insurance Companies: This section was amended to clarify that the tax on captive insurance companies does not apply to a “foreign captive insurance company.” The amendment also added language to clarify that the newly defined “foreign captive insurance company” is not subject to corporate income tax, franchise tax, gross premiums tax or the insurance regulatory charge. However, this does not apply to foreign captive insurance companies for corporate income tax that are required to be included in a combined return.

(Effective June 12, 2018; SB 99, s. 38.2(f), S.L. 2018-5.)

G.S. 105-228.5(g) – Taxes Measured by Gross Premiums: This subsection was rewritten to add “foreign captive insurance company” to the list of exempt entities from the gross premiums tax.

(Effective June 12, 2018; SB 99, s. 38.2(g), S.L. 2018-5.)

EXCISE TAX



PRIVILEGE TAXES – ARTICLE 2

G.S. 105-41(a) – Attorneys-At-Law and Other Professionals: Session Law 2017-151 previously amended General Statute 105-41(a)(2) to add language in the statute extending the requirement for a privilege license to massage and bodywork therapists. However, due to a technical issue, that amendment required re-enactment. The re-enacted provision is effective when it becomes law and continues to apply the new privilege license to taxable years beginning on or after July 1, 2018.

(Effective June 12, 2018; SB 99, s. 38.2(h), S.L. 2018-5)

TOBACCO PRODUCTS TAX – ARTICLE 2A

G.S. 105-113.4E – Modified Risk Tobacco Products: This is a new statute that defines a “modified risk tobacco product,” as a product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products. The new statute provides an excise tax rate reduction based on whether the Food and Drug Administration (FDA) issues a risk modification order (50% tax rate reduction) or an exposure modification order (25% tax rate reduction) for a tobacco product. The new provision also sets out how a tobacco product licensee must substantiate a modified risk tobacco product to the Department to obtain the reduced tax rate and provisions for when a product no longer qualifies as a modified risk tobacco product.

(Effective June 12, 2018; SB 99, s. 38.7(a), S.L. 2018-5)

G.S. 105-113.9 – Out-of-State Shipments. Subsection (2) of this statute is rewritten to clarify that interstate business as used in this section involves purchasers of tobacco products and removes language indicating that a nonresident wholesale or retail dealer with no place of business within the State must be registered with the Secretary.

(Effective June 12, 2018; SB 99, s. 38.6(a), S.L. 2018-5)

G.S. 105-113.36 – Wholesale Dealer and Retail Dealer Must Obtain License: This statute is rewritten to remove language indicating that a licensed retail dealer may “make” tobacco products at their place of business, as making or manufacturing any tobacco product falls within the definition of a wholesale dealer and therefore requires a wholesale dealer license for that type of activity.

(Effective June 12, 2018; SB 99, s. 38.6(b), S.L. 2018-5)

ALCOHOLIC BEVERAGE LICENSE AND EXCISE TAXES - ARTICLE 2C

G.S. 105-113.83A – Registration and Discontinuance Requirements; Penalties: This is a new statute that requires certain ABC permit holders, as listed in the new statute, to register with the Department for excise tax purposes, as well as to require these same permittees to notify the Department when a permittee discontinues their business. Additionally, Chapter 18B penalties are available for failing to comply with the requirements of this provision upon the Department notifying the ABC Commission of the violation. The provisions of this statute are effective July 1, 2018 and permittees must register with the Department on or before December 1, 2018.

(Effective July 1, 2018; SB 99, s. 38.6(c), S.L. 2018-5)

G.S. 105-113.86 – Bond or Irrevocable Letter of Credit. Subsection (b) of this statute is rewritten to remove language indicating that nonresident vendors may post a bond secured “by a pledge of obligation of the federal government, the State, or a political subdivision of the State.”

(Effective June 12, 2018; SB 99, s. 38.6(d), S.L. 2018-5)

GASOLINE, DIESEL, AND BLENDS – ARTICLE 36C

105-449.80 – Tax Rate: Subsection (a) of this statute is rewritten to add language allowing the Department to obtain the Consumer Price Index data needed to calculate the motor fuel tax rate by using “data determined by the Secretary to be equivalent” in lieu of the specific Bureau of Labor Statistics detailed report referenced in the statute. The Bureau of Labor Statistics stopped publication of the detailed report in June 2017, and instead releases the same information through a public access database available on the Bureau’s website. The new language allows the Department to use the database information as an equivalent source.

(Effective June 12, 2018; SB 99, s. 38.6(f), S.L. 2018-5)

G.S. 105-449.88 – Exemptions from the Excise Tax: This statute is amended by adding a new exempt entity from the motor fuels excise tax. The new subsection reads as follows:

“(11) Motor fuel sold to a joint agency created by interlocal agreement pursuant to G.S. 160A-462 to provide fire protection, emergency services, or police protection.”

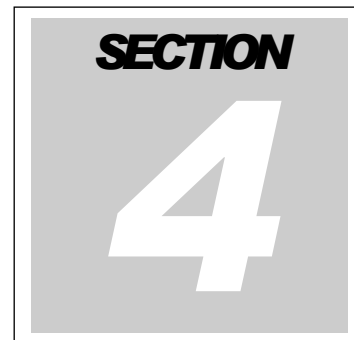
(Effective October 1, 2018; SB 220, s. 1, S.L. 2018-39)

North Carolina / South Carolina Boundary: Section 2(b) of Session Law 2016-23 set the motor fuel tax rate for gas stations deemed a “special class” as part of the North Carolina / South Carolina boundary recertification. Per S.L. 2016-23, an establishment to which permits may be issued under G.S. § 18B-1006(n1) is considered a special class of property under the North Carolina Constitution, and the excise tax rate for motor fuel sold by the establishment was set at 16 cents per gallon, which was the rate charged by South Carolina at the time of enactment. The Revenue Laws Study Committee monitors South Carolina’s motor fuels excise tax rate and determined that in 2017, the South Carolina Legislature passed House Bill 3516, which permanently increased the motor fuel tax rate by two cents per gallon each year for the next six years. The following chart sets out the applicable motor fuels per gallon, excise tax rate for the special class properties:

Effective Date	Per Gallon Motor Fuels Excise Tax Rate
July 1, 2017	Eighteen cents (18¢)
July 1, 2018	Twenty cents (20¢)
July 1, 2019	Twenty-two cents (22¢)
July 1, 2020	Twenty-four cents (24¢)
July 1, 2021	Twenty-six cents (26¢)
July 1, 2022	Twenty-eight cents (28¢)

(Effective as indicated in table above; SB 99, ss. 38.6(g), 38.6(h), 38.6(i), 38.6(j), 38.6(k) and 38.6(l), S.L. 2018-5)

SALES AND USE TAX



SALES AND USE TAX – ARTICLE 5

DEFINITIONS

G.S. 105-164.3 – Definitions: The 2017 and 2018 General Assembly added new defined terms and amended multiple definitions for existing defined terms. The changes and their effective dates are as follows:

Capital Improvement – (2c). The definition of the term is amended to include the defined term “repair, maintenance, and installation *services*.” The definition of the term as amended is “. . . [o]ne or more of the following:

- ...
e. Painting or wallpapering of real property, except where painting or wallpapering is incidental to the repair, maintenance, and installation *services*.
...
- k. An addition or alteration to real property that is permanently affixed or installed to real property and is not an activity listed in subdivision (33*l*) of this section as repair, maintenance, and installation *services*.” [Emphasis added.]

(Effective June 12, 2018; SB 99, s. 38.5(b), S.L. 2018-5.)

Freestanding Appliance – (11d). The definition of the term, as amended, is “[a] machine commonly thought of as an appliance operated by gas or electric current. Examples include a dishwasher, washing machine, clothes dryer, refrigerator, freezer, microwave, and range, regardless of whether the range is slide-in or drop-in.”

(Effective June 12, 2018; SB 99, s. 38.5(b), S.L. 2018-5.)

Mixed Transaction Contract – (20b). The definition of the term is amended to clarify that the term “mixed transaction contract” applies to real property transactions and does not apply to repair, maintenance, and installation services for tangible personal property. As amended, the term is defined as “[a] contract that includes both a real property contract for a capital improvement and a repair, maintenance, and installation service for real property that is not related to the capital improvement.”

(Effective retroactively to January 1, 2017, unless an amendment increases a sales and use tax liability, then the change is effective June 12, 2018; SB 99, s. 38.5(a), S.L. 2018-5.)

Mixed Transaction Contract – (20b). The definition of the term “mixed transaction contract” is further amended to include the defined term “repair, maintenance, and installation services” The definition as further amended is “[a] contract that includes both a real property contract for a capital improvement and repair, maintenance, and installation services for real property that are not related to the capital improvement.” [Emphasis added.]

(Effective June 12, 2018; SB 99, s. 38.5.(b), S.L. 2018-5.)

Net Taxable Sales – (24). The definition of the term as amended is “[t]he gross sales or gross receipts of a retailer or another person taxed under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] after deducting exempt sales and nontaxable sales.”

(Effective June 12, 2018; SB 99, s. 38.5.(b), S.L. 2018-5.)

Property Management Contract. – (30b). The definition of the term is added and defined as “[a] written contract to manage one or more of the activities listed in this subdivision that are related to real property used for business, educational, commercial, or income-producing purposes. The activity may include the lease or rental of the property on behalf of the owner, other than the lease or rental of an accommodation taxable under G.S. 105-164.4(a)(3).

The term does not include a contract for repair, maintenance, and installation services for real property. The activities that may be performed under a property management contract are as follows:

- a. Hiring and supervising employees for the property.
- b. Providing a person to manage the property.
- c. Receiving and applying revenues received from tenants of the property.
- d. Arranging for services from third parties in order to comply with the landlord's obligations under a lease or rental agreement or to comply with facility-related needs of the property's occupants. The activity may include supplemental repair, maintenance, and installation services to complement taxable services provided by third-party vendors if no additional fee is imposed under the contract for that supplemental service.
- e. Incurring and paying expenses derived from the operation of the real property.
- f. Handling administrative affairs for the real property.

(Effective January 1, 2020; SB 99, s. 38.5.(x), S.L. 2018-5.)

Qualifying Datacenter – (33c). Language is added regarding certain requirements for datacenters to address the fact that often there are no jobs at the time of application to the Secretary of Commerce for a written determination and therefore, no wages are being paid and no health insurance is being provided. As amended, the definition of the term “qualifying datacenter” is “[a] datacenter that satisfies each of the following conditions:

- a. The datacenter certifies that it satisfies or will satisfy the wage standard for the development tier area or zone in which the datacenter is located. There is no wage standard for a development tier one area. If an urban progress zone or an agrarian growth zone is not in a development tier one area, then the wage standard for that zone is an average weekly wage that is at least equal to ninety percent (90%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county in which the datacenter is located. The wage standard for a development tier two area or a development tier three area is an average weekly wage that is at least equal to one hundred ten percent (110%) of the lesser of the average wage for all insured private employers in the State and ninety percent (90%) of the average wage for all insured private employers in the county in which the datacenter is located.
- b. The Secretary of Commerce has made a written determination that at least seventy-five million dollars (\$75,000,000) in private funds has been or will be invested by one or more owners, users, or tenants of the datacenter within five years of the date the owner, user, or tenant of the datacenter makes its first real or tangible property investment in the datacenter on or after January 1, 2012. Investments in real or tangible property in the datacenter made prior to January 1, 2012, may not be included in the investment required by this subdivision.
- c. The datacenter certifies that it provides or will provide health insurance for all of its full-time employees as long as the datacenter operates. The datacenter provides health insurance if it pays or will pay at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.”

(Effective June 12, 2018; SB 99, s. 38.5.(b), S.L. 2018-5.)

Prosthetic Device – (30d). This term was previously codified as G.S. 105-164.3(30b).

(Effective January 1, 2020; SB 99, s. 38.5.(x), S.L. 2018-5.)

Remodeling – (33i). The definition of the term is amended to include the defined term “repair, maintenance, and installation services.” The term as amended is “[a] transaction comprised of multiple services performed by one or more persons to restore, improve, alter, or update real property that may otherwise be subject to tax as repair, maintenance, and installation services if separately performed. The term includes a transaction where the internal structure or design of one or more rooms or areas within a room or building are substantially changed. The term does not include a single service that is included in repair, maintenance, and installation services.

The term does not include a transaction where the true purpose is repair, maintenance, and installation services no matter that another service included in repair, maintenance, and installation services is performed that is incidental to the true purpose of the transaction; examples include repair of sheetrock that includes applying paint,

replacement of cabinets that includes installation of caulk or molding, and the installation of hardwood floors that includes installation of shoe molding.”

(Effective June 12, 2018; SB 99, s. 38.5.(b), S.L. 2018-5.)

Repair, Maintenance, and Installation Services – (33). The definition of the term is amended to separate services applicable to motor vehicles into one subdivision and to change “repair, maintenance, and installation service” to “repair, maintenance, and installation *services*” throughout the definition. The definition of the term “repair, maintenance, and installation services” as amended “includes the activities listed in this subdivision and applies to tangible personal property, motor vehicle, digital property, and real property. The term does not include services used to fulfill a real property contract taxed in accordance with G.S. 105-164.4H:

- d. To install, apply, connect, adjust, or set into position tangible personal property or digital property. The term includes floor refinishing and the installation of carpet, flooring, floor coverings, windows, doors, cabinets, countertops, and other installations where the item being installed may replace a similar existing item. The replacement of more than one of a like-kind item, such as replacing one or more windows, is repair, maintenance, and installation *services*. The term does not include an installation defined as a capital improvement under subdivision (2c)d. of this section and substantiated as a capital improvement under G.S. 105-164.4H(a1). [Emphasis added.]
- e. To inspect or monitor property or install, apply, or connect tangible personal property or digital property on a motor vehicle or adjust a motor vehicle.”

(Effective June 12, 2018; SB 99, s. 38.5.(b), S.L. 2018-5.)

Sale or Selling – (36). The definition of the term as amended is “[t]he transfer for consideration of title, license to use or consume, or possession of tangible personal property or digital property or the performance for consideration of a service. The transfer or performance may be conditional or in any manner or by any means. The term applies to the following:

- a. Fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work.
- b. Furnishing or preparing tangible personal property consumed on the premises of the person furnishing or preparing the property or consumed at the place at which the property is furnished or prepared.
- c. A transaction in which the possession of the property is transferred but the seller retains title or security for the payment of the consideration.
- d. A lease or rental.
- e. Transfer of a digital code.
- f. An accommodation.

- g. A service contract.
- h. Any other item subject to tax under . . . Article [5 of Chapter 105 of the North Carolina General Statutes].”

(Effective June 12, 2018; SB 99, s. 38.5.(b), S.L. 2018-5.)

Sales price – (37). The definition of the term is amended to clarify that a credit allowed for trade-in does not reduce the sales price of the item purchased. As amended, the definition of the term “sales price” is, in part, “[t]he total amount or consideration for which tangible personal property, digital property, or services are sold, leased, or rented. The consideration may be in the form of cash, credit, property, or services. The sales price must be valued in money, regardless of whether it is received in money.

a. The term includes all of the following:

...

- 7. Credit for trade-in. The amount of any credit for trade-in is not a reduction of the sales price.
- 8. The amount of any discounts that are reimbursable by a third party and can be determined at the time of sale through any of the following:
 - I. Presentation by the consumer of a coupon or other documentation.
 - II. Identification of the consumer as a member of a group eligible for a discount.
 - III. The invoice the retailer gives the consumer.”

(Effective June 12, 2018; SB 99, s. 38.5.(b), S.L. 2018-5.)

Secondary Metals Recycler – (37g). This term is added and is defined as “[a] person that gathers and obtains ferrous metals, nonferrous metals, and items that have served their original economic purpose and that converts them by processes, including sorting, cutting, classifying, cleaning, baling, wrapping, shredding, or shearing into a new or different product for sale consisting of prepared grades.”

(Effective July 1, 2018, and applies to sales on or after that date; SB 257, s. 38.8.(d), S.L. 2017-57.)

Service Contract – (38b). The definition of the term is amended to include the defined term “repair, maintenance, and installation *services*.” The definition as amended is “[a] contract where the obligor under the contract agrees to maintain, monitor, inspect, repair, or provide another service included in the definition of repair, maintenance, and installation *services* to digital property, tangible personal property, or real property for a period of time or some other defined measure. The term does not include a single *service included in* repair, maintenance, or installation *services*, but does include a contract where the obligor may provide a service included in the definition of repair, maintenance, and installation services as a condition of the contract. The term includes a service contract for a pool, fish tank, or similar aquatic feature and a home warranty.

Examples include a warranty agreement other than a manufacturer's warranty or dealer's warranty provided at no charge to the purchaser, an extended warranty agreement, a maintenance agreement, a repair agreement, or a similar agreement or contract." Emphasis added.

(Effective June 12, 2018; SB 99, s. 38.5.(b), S.L. 2018-5.)

Streamlined Agreement – (45a). The reference date to the Streamlined Agreement is updated to the most recent version. As amended, the definition of the term is “[t]he Streamlined Sales and Use Tax Agreement as amended as of May 3, 2018.”

(Effective June 12, 2018; SB 99, s. 38.5.(b), S.L. 2018-5.)

Use – (49). The definition of “use” is amended to remove a cross-reference that is no longer applicable on or after January 1, 2017 as a result of the removal of the statutory exclusion from the definition of “storage.” The definition of the term as amended is “[t]he exercise of any right, power, or dominion whatsoever over tangible personal property, digital property, or a service by the purchaser of the property or service. The term includes withdrawal from storage, distribution, installation, affixation to real or personal property, and exhaustion or consumption of the property or service by the owner or purchaser. The term does not include a sale of tangible personal property, digital property, or a service in the regular course of business.”

(Effective June 12, 2018; SB 99, s. 38.5.(b), S.L. 2018-5.)

SALES AND USE TAX IMPOSITIONS

The following subdivisions are amended to merge the imposition of sales and use tax on repair, maintenance, and installation services with the taxation of the appropriate levies on tangible personal property, digital property, and services. This change alleviates the necessity of determining whether the imposition is on the sale and installation of an item or on the sale of repair, maintenance, and installation services. The taxation of the installation is the same, regardless of how it is classified. This change removes any distinction that may have existed.

G.S. 105-164.4(a)(1) – Sales Tax Imposed at the General State Rate on Tangible Personal Property Sold at Retail: This subdivision is amended to provide “[t]he general rate of tax applies to the sales price of each item or article of tangible personal property that is sold at retail and is not subject to tax under another subdivision in this section. A sale of a freestanding appliance is a retail sale of tangible personal property. *This subdivision applies to the sales price of or gross receipts derived from repair, maintenance, and installation services to tangible personal property.* This subdivision does not apply to repair, maintenance, and installation services for real property; these services are taxable under subdivision (16) of this subsection.” [Emphasis added.]

(Effective June 12, 2018; SB 99, s. 38.5.(c), S.L. 2018-5.)

G.S. 105-164.4(a)(1a) – Sales Tax Imposed at the General Rate on a Manufactured Home, a Modular Home, an Aircraft, or a Qualified Jet Engine Sold at Retail: This subdivision is amended to provide that “[t]he general rate applies to the sales price of each of the following items sold at retail, including all accessories attached to the item when it is delivered to the purchaser, *and to the sales price of or the gross receipts derived from repair, maintenance, and installation services for each of the following items. The items taxable under this subdivision are as follows:*

- a. A manufactured home.
- b. A modular home. The sale of a modular home to a modular homebuilder is considered a retail sale, no matter that the modular home may be used to fulfill a real property contract. A person who sells a modular home at retail is allowed a credit against the tax imposed by this subdivision for sales or use tax paid to another state on tangible personal property incorporated in the modular home. The retail sale of a modular home occurs when a modular home manufacturer sells a modular home to a modular homebuilder or directly to the end user of the modular home.
- c. An aircraft. The maximum tax is two thousand five hundred dollars (\$2,500) per article. *The maximum tax does not apply to the sales price of or gross receipts derived from repair, maintenance, and installation services, but the use tax exemption in G.S. 105-164.27A(a3) may apply to these services.*
- d. A qualified jet engine.” [Emphasis added.]

(Effective June 12, 2018; SB 99, s. 38.5(c), S.L. 2018-5.)

G.S. 105-164(a)(1b) – Sales Tax Imposed at the Rate of Three Percent (3%) on a Boat Sold at Retail: This subdivision is amended to provide that “[t]he rate of three percent (3%) applies to the sales price of each boat sold at retail, including all accessories attached to the boat when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars (\$1,500) per article. *The maximum tax does not apply to the sales price of or gross receipts derived from the sales price of or gross receipts derived from repair, maintenance, and installation services, but the use tax exemption in G.S. 105-164.27A(a3) may apply to these services.*” [Emphasis added.]

(Effective June 12, 2018; SB 99, s. 38.5(c), S.L. 2018-5.)

G.S. 105-164.4(a)(6b) – Sales Tax Imposed at the General Rate on Digital Property Sold at Retail: This subdivision is amended, in part, to provide that “[the] general rate applies to the sales price of digital property that is sold at retail and that is listed in this subdivision, is delivered or accessed electronically, is not considered tangible personal property, and would be taxable under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] if sold in a tangible medium. The tax applies regardless of whether the purchaser of the item has a right to use it permanently or to use it without making continued payments. *This subdivision applies to the sales price of or gross receipts derived from repair, maintenance, and installation services to digital property.*

The tax does not apply to a service that is taxed under another subdivision of this subsection or to an information service. The following property is subject to tax under this subdivision:”

(Effective June 12, 2018; SB 99, s. 38.5.(c), S.L. 2018-5.)

G.S. 105-164.4(a)(16) – Sales Tax Imposed on Repair, Maintenance, and Installation Services for Real Property: This subdivision is amended to provide that “[t]he general rate applies to the sales price of or the gross receipts derived from repair, maintenance, and installation services *for real property* and generally includes any tangible personal property or digital property that becomes a part of or is applied to a purchaser's property. A mixed transaction contract and a real property contract are taxed in accordance with G.S. 105-164.4H.” [Emphasis added.]

(Effective June 12, 2018; SB 99, s. 38.5.(c), S.L. 2018-5.)

MISCELLANEOUS ITEMS

G.S. 105-164.4B(a) – Sourcing General Principles: This subsection is amended and provides, in part, that “[t]he following principles apply in determining where to source the sale of a product for the seller's purpose and do not alter the application of the tax imposed under G.S. 105-164.6. Except as otherwise provided in [G.S. 105-164.4B(a)], a service is sourced where the purchaser can potentially first make use of the service. These principles apply regardless of the nature of the product, except as otherwise noted in [G.S. 105-164.4B]: . . .” .

(Effective June 12, 2018; SB 99, s. 38.5.(d), S.L. 2018-5.)

G.S. 105-164.4B(i) – Sourcing Computer Software Renewal: This subsection is added to provide guidance regarding the sourcing of a computer software renewal. The subsection provides that “[t]he gross receipts derived from the renewal of a service contract for prewritten software is generally sourced pursuant to subdivision (a) of [G.S. 105-164.4B]. However, sourcing the renewal to an address where the purchaser received the underlying prewritten software does not constitute bad faith provided the seller has not received information from the purchaser that indicates a change in the location of the underlying software.”

(Effective June 12, 2018; SB 99, s. 38.5.(d), S.L. 2018-5.)

G.S. 105-164.4H(a1) – Substantiation: This subsection is amended to correct a punctuation error.

(Effective June 12, 2018; SB 99, s. 38.5.(s), S.L. 2018-5.)

G.S. 105-164.6(b) – Liability: This subsection is amended to correct a statutory cross-reference from G.S. 105.164.4H(a) to G.S. 105.164.4H(a1).

(Effective retroactively to January 1, 2017, and applies to sales and purchases made on or after that date; SB 99, s. 38.5.(g), S.L. 2018-5)

G.S. 105-164.7 – Retailer or Facilitator to Collect Sales Tax from Purchaser as Trustee for State: This section is amended to include services and to change the term “taxable item” to “taxable sale.” The section as amended provides “[t]he sales tax imposed by . . . Article [5 of Chapter 105 of the North Carolina General Statutes] is intended to be passed on to the purchaser of a taxable item or service and borne by the purchaser instead of by the retailer. A retailer must collect the tax due on an item or service when sold at retail. The requirements of this section apply to facilitators liable for tax under . . . Article [5 of Chapter 105 of the North Carolina General Statutes]. The tax is a debt from the purchaser to the retailer until paid and is recoverable at law by the retailer in the same manner as other debts. A retailer is considered to act as a trustee on behalf of the State when it collects tax from the purchaser on a taxable sale. The tax must be stated and charged separately on the invoices or other documents of the retailer given to the purchaser at the time of the sale except for either of the following:

- (1) Vending machine sales.
- (2) Where a retailer displays a statement indicating the sales price includes the tax.”

(Effective June 12, 2018; SB 99, s. 38.5.(v), S.L. 2018-5.)

G.S. 105-164.11(b) – Refund Procedures First Remedy: This subsection is amended to include “[t]he first course of remedy available to purchasers seeking a refund of over-collected sales or use taxes from the seller are the customer refund procedures provided in . . . Chapter [105 of the North Carolina General Statutes] or otherwise provided by administrative rule, bulletin, or directive on the law issued by the Secretary. Where a person recovers tax under G.S. 105-164.11B, a refund or credit under this section is not allowed by the Secretary.”

(Effective June 12, 2018; SB 99, s. 38.5.(i), S.L. 2018-5.)

G.S. 105-164.11B – Recover Sales Tax Paid: This section is added and provides that “[a] retailer who pays sales and use tax on property or services and subsequently resells the property or services at retail, without the property or service being used by the retailer, may recover the sales or use tax originally paid to a seller as provided in this section. A retailer entitled to recover tax under this section may reduce taxable receipts by the taxable amount of the purchase price of the property or services resold for the period in which the retail sale occurs. *A recovery of tax allowed under this section is not an overpayment of tax and, where such recovery is taken, a refund of the tax originally paid should not be requested pursuant to the authority under G.S. 105-164.11.* Any amount for tax recovered under this section in excess of tax due for a reporting period under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] is not subject to refund. Any tax recovered under this section may be carried

forward to a subsequent reporting period and taken as an adjustment to taxable receipts. The records of the retailer must clearly reflect and support the adjustment to taxable receipts for the period in which the adjustment is made." [Emphasis added].

(Effective June 12, 2018; SB 99, s. 38.5.(h), S.L. 2018-5.)

EXEMPTIONS AND EXCLUSIONS

G.S. 105-164.4G(e) – Exceptions to an Entertainment Activity

The following exceptions are either amended or added as noted below:

Entertainment Activity Exception – Right to Participate in Sporting Activities (1).

This subdivision is amended and provides an exception for “[a]n amount paid solely for the right to participate, other than to be a spectator, in sporting activities. Examples of these types of charges include bowling fees, golf green fees, and gym memberships.”

(Effective June 12, 2018; SB 99, s. 38.5.(e), S.L. 2018-5.)

Entertainment Activity Exception – Right to Participate in Activities (6). This subdivision is added to provide an exception for “[a]n amount paid for the right to participate, other than to be a spectator, in the following activities:

- a. Rock climbing, skating, skiing, snowboarding, sledding, zip lining, or other similar activities.
- b. Instruction classes related to the items included in sub-subdivision a. of this subdivision.
- c. Riding on a carriage, boat, train, plane, horse, chairlift, or other similar rides.
- d. Amusement rides, including a waterslide.”

(Effective June 12, 2018; SB 99, s. 38.5.(e), S.L. 2018-5.)

G.S. 105-164.4G(f) – Exemptions to an Entertainment Activity

The following exemptions are amended as noted below:

Entertainment Activity Exemption – Membership Charge Deductible as a Charitable Contribution (1). This subdivision is amended to provide an exemption for “[t]he portion of a membership charge that is deductible as a charitable contribution under section 170 of the Code or that is described in section 170(l)(2) of the Code.”

(Effective June 12, 2018; SB 99, s. 38.5.(u), S.L. 2018-5.)

Entertainment Activity Exemption – Donation Deductible as a Charitable Contribution (2). This subdivision is amended to provide an exemption for “[a] donation that is deductible as a charitable contribution under section 170 of the Code or that is described in section 170(l)(2) of the Code.”

(Effective June 12, 2018; SB 99, s. 38.5.(u), S.L. 2018-5.)

G.S. 105-164.4(c) – Service Contracts Exceptions: This subsection is repealed and is incorporated into G.S. 105-164.13(61a)(p).

(Effective June 12, 2018; SB 99, s. 38.5.(f), S.L. 2018-5.)

Service Contract Exemption – Article 5F, Certain Machinery and Equipment (4).

This subdivision is repealed in conjunction with the repeal of Article 5F, Certain Machinery and Equipment, of Chapter 105 of the North Carolina General Statutes. A service contract, for an item (such as mill machinery) that is currently exempt from sales and use taxes, will remain exempt from tax on or after the date of repeal unless other legislation is signed into law.

(Effective July 1, 2018, and applies to sales on or after that date; SB 257, s. 38.8.(b), S.L. 2017-57.)

G.S. 105-164.13 – Exemptions and Exclusions: The 2017 and 2018 General Assembly repealed, added, and enacted clarifying changes to the exemptions from sales and use tax. The changes and their effective dates are as follows:

Products . . . that are subject to tax under Article 5F . . . – (5a). This exemption is repealed simultaneously with the repeal of Article 5F, Certain Machinery and Equipment, of Chapter 105 of the North Carolina General Statutes. See below for subdivisions (5e) through (5n) for additional pertinent information.

(Effective July 1, 2018, and applies to sales made on or after that date; SB 257, s. 38.8.(a), S.L. 2017-57.)

Sales of qualifying mill machinery . . . – (5e). This subdivision is added and provides an exemption for “[s]ales of mill machinery or mill machinery parts or accessories to any of the following:

- a. A manufacturing industry or plant. A manufacturing industry or plant does not include (i) a delicatessen, cafe, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of foods prepared by it for consumption on or off its premises or (ii) a production company.
- b. A contractor or subcontractor if the purchase is for use in the performance of a contract with a manufacturing industry or plant.
- c. A subcontractor if the purchase is for use in the performance of a contract with a general contractor that has a contract with a manufacturing industry or plant.”

(Effective July 1, 2018, and applies to sales made on or after that date; SB 257, s. 38.8.(c), S.L. 2017-57. Prior to this date, such qualifying items were exempt from sales and use taxes under G.S. 105-164.13(5a), which is repealed simultaneously with the effective date of this exemption.)

Sales of qualifying mill machinery . . . – (5e). This subdivision is amended to provide that the term “accessories” does not include electricity. This subdivision provides an exemption for “[s]ales of mill machinery or mill machinery parts or accessories to any of

the persons listed in this subdivision. For purposes of this subdivision, the term ‘accessories’ does not include electricity. The persons are:
. . . .”

(Effective June 12, 2018; SB 99, s. 38.5.(j), S.L. 2018-5.)

Sales of qualifying items to a major recycling facility . . . – (5f). This subdivision is added and provides an exemption for “[s]ales to a major recycling facility of any of the following tangible personal property for use in connection with the facility:

- a. Cranes, structural steel crane support systems, and foundations related to the cranes and support systems.
- b. Port and dock facilities.
- c. Rail equipment.
- d. Material handling equipment.”

(Effective July 1, 2018, and applies to sales made on or after that date; SB 257, s. 38.8.(c), S.L. 2017-57. Prior to this date, such qualifying items were exempt from sales and use taxes under G.S. 105-164.13(5a), which is repealed simultaneously with the effective date of this exemption.)

Sales of qualifying equipment . . . to a company primarily engaged . . . in research and development . . . – (5g). This subdivision is added and provides an exemption for “[s]ales of equipment, or an attachment or repair part for equipment, that meets all of the following requirements:

- a. Is sold to a company primarily engaged at the establishment in research and development activities in the physical, engineering, and life sciences included in industry group 54171 of NAICS.
- b. Is capitalized by the company for tax purposes under the Code.
- c. Is used by the company at the establishment in the research and development of tangible personal property.”

(Effective July 1, 2018, and applies to sales made on or after that date; SB 257, s. 38.8.(c), S.L. 2017-57. Prior to this date, such qualifying items were exempt from sales and use taxes under G.S. 105-164.13(5a), which is repealed simultaneously with the effective date of this exemption.)

Sales of qualifying equipment . . . to a company primarily engaged . . . in software publishing activities . . . – (5h). This subdivision is added and provides an exemption for “[s]ales of equipment, or an attachment or repair part for equipment, that meets all of the following requirements:

- a. Is sold to a company primarily engaged at the establishment in software publishing activities included in industry group 5112 of NAICS.

- b. Is capitalized by the company for tax purposes under the Code.
- c. Is used by the company at the establishment in the research and development of tangible personal property.”

(Effective July 1, 2018, and applies to sales made on or after that date; SB 257, s. 38.8.(c), S.L. 2017-57. Prior to this date, such qualifying items were exempt from sales and use taxes under G.S. 105-164.13(5a), which is repealed simultaneously with the effective date of this exemption.)

Sales of qualifying equipment . . . to a company primarily engaged . . . in industrial machinery refurbishing activities . . . – (5i). This subdivision is added and provides an exemption for “[s]ales of equipment, or an attachment or repair part for equipment, that meets all of the following requirements:

- a. Is sold to a company primarily engaged at the establishment in industrial machinery refurbishing activities included in industry group 811310 of NAICS.
- b. Is capitalized by the company for tax purposes under the Code.
- c. Is used by the company at the establishment in repairing or refurbishing tangible personal property.”

(Effective July 1, 2018, and applies to sales made on or after that date; SB 257, s. 38.8.(c), S.L. 2017-57. Prior to this date, such qualifying items were exempt from sales and use taxes under G.S. 105-164.13(5a), which is repealed simultaneously with the effective date of this exemption.)

Sales of qualifying items . . . to a company located at a ports facility for waterborne commerce – (5j). This subdivision is added and provides an exemption for “[s]ales of the following to a company located at a ports facility for waterborne commerce:

- a. Machinery and equipment that is used at the facility to unload or to facilitate the unloading or processing of bulk cargo to make it suitable for delivery to and use by manufacturing facilities.
- b. Parts, accessories, or attachments used to maintain, repair, replace, upgrade, improve, or otherwise modify such machinery and equipment.”

(Effective July 1, 2018, and applies to sales made on or after that date; SB 257, s. 38.8.(c), S.L. 2017-57. Prior to this date, such qualifying items were exempt from sales and use taxes under G.S. 105-164.13(5a), which is repealed simultaneously with the effective date of this exemption.)

Sales of qualifying items . . . to a secondary metals recycler – (5k). This subdivision is added and provides an exemption for “[s]ales of the following to a secondary metals recycler:

- a. Equipment, or an attachment or repair part for equipment, that (i) is capitalized by the person for tax purposes under the Code, (ii) is used by the person in the secondary metals recycling process, and (iii) is not a motor vehicle or an attachment or repair part for a motor vehicle.
- b. Fuel, piped natural gas, or electricity for use at the person's facility at which the primary activity is secondary metals recycling.”

(Effective July 1, 2018, and applies to sales made on or after that date; SB 257, s. 38.8.(c), S.L. 2017-57. Prior to this date with exceptions, certain qualifying items purchased by certain metal recyclers may be exempt from sales and use taxes under G.S. 105-164.13(5a), which is repealed simultaneously with the effective date of this exemption.)

Sales of qualifying equipment . . . to a company primarily engaged . . . in . . . extracting precious metals . . . – (5l). This subdivision is added and provides an

exemption for “[s]ales of equipment, or an attachment or repair part for equipment, that meets all of the following requirements:

- a. Is sold to a company primarily engaged at the establishment in processing tangible personal property for the purpose of extracting precious metals, as defined in G.S. 66-406, to determine the value for potential purchase.
- b. Is capitalized by the company for tax purposes under the Code.
- c. Is used by the company in the process described in this subdivision.”

(Effective July 1, 2018, and applies to sales made on or after that date; SB 257, s. 38.8.(c), S.L. 2017-57. Purchases of such qualifying items on or after July 1, 2016 and prior to July 1, 2018, were exempt from sales and use tax under G.S. 105-164.13(5a), which is repealed simultaneously with the effective date of this exemption.)

Sales of qualifying equipment . . . to a company . . . engaged in the fabrication of metal work . . . – (5m). This subdivision is added and provides an exemption for

“[s]ales of equipment, or an attachment or repair part for equipment, that meets all of the following requirements:

- a. Is sold to a company that is engaged in the fabrication of metal work and that has annual gross receipts, including the gross receipts of all related persons, as defined in G.S. 105-163.010, from the fabrication of metal work of at least eight million dollars (\$8,000,000).
- b. Is capitalized by the company for tax purposes under the Code.
- c. Is used by the company at the establishment in the fabrication or manufacture of metal products or used by the company to create equipment for the fabrication or manufacture of metal products.”

(Effective July 1, 2018, and applies to sales made on or after that date; SB 257, s. 38.8.(c), S.L. 2017-57.)

Sales of repair or replacement parts for a ready-mix concrete mill . . . – (5n). This subdivision is added and provides an exemption for “[s]ales of repair or replacement parts for a ready-mix concrete mill, regardless of whether the mill is freestanding or affixed to a motor vehicle, to a company that primarily sells ready-mix concrete.”

(Effective July 1, 2018, and applies to sales made on or after that date; SB 257, s. 38.8.(c), S.L. 2017-57. Prior to the effective date, purchases of such to repair a concrete mill mounted on a motor vehicle after the date the concrete mill is mounted, are not exempt from tax under G.S. 105-164.13(5a), which is repealed simultaneously with the effective date of this exemption.)

Boats, fuel oil, . . . to an operator of a for-hire vessel . . . for principal use in the commercial use of the boat. . . – (9)(c). This sub-subdivision is amended to correct the term “for-hire boat” to “for-hire vessel” as defined by G.S. 113-174.

(Effective June 12, 2018; SB 99, s. 38.5.(j), S.L. 2018-5.)

Drugs . . . – (13). This subdivision is amended and provides an exemption for “[a]ll of the drugs listed in this subdivision, including their packaging materials and any instructions or information about the drugs included in the package with them. This subdivision does not apply to pet food or feed for animals. The drugs exempt under this subdivision are as follows:

- a. Drugs required by federal law to be dispensed only on prescription.
- b. Over-the-counter drugs sold on prescription. This sub-subdivision does not apply to purchases of over-the-counter drugs by hospitals and other medical facilities for use and treatment of patients.
- c. Insulin.”

(Effective June 12, 2018; SB 99, s. 38.5.(j), S.L. 2018-5.)

Accounts of purchasers, representing taxable sales, . . . found to be worthless . . . is a “bad debt” – (15). This subdivision is amended and provides an exemption for “[a]ccounts of purchasers, representing taxable sales, on which the tax imposed by . . . Article [5 of Chapter 105 of the North Carolina General Statutes] has been paid, that are found to be worthless and actually charged off for income tax purposes may, at corresponding periods, be deducted from gross sales. In the case of a municipality that sells electricity, the account may be deducted if it meets all the conditions for charge-off that would apply if the municipality were subject to income tax. Any accounts deducted pursuant to this subdivision must be added to gross sales if afterwards collected. For purposes of this exemption, a worthless account of a purchaser is a ‘bad debt’ as allowed under section 166 of the Code. The amount calculated pursuant to section 166 of the Code must be adjusted to exclude financing charges or interest, sales or use taxes charged on the sales price, uncollectible amounts on property that remains in the possession of the seller until the full purchase price is paid, expenses incurred in attempting to collect any debt, and repossessed property.”

(Effective June 12, 2018; SB 99, s. 38.5.(j), S.L. 2018-5.)

Fuel, electricity, and piped natural gas sold to a secondary metals recycler . . . – (57a). This exemption is repealed. See new exemption G.S. 105-164.13(5k).

(Effective July 1, 2018, and applies to sales made on or after that date; SB 257, s. 38.8.(a), S.L. 2017-57. Effective October 8, 2017, and applies retroactively to sales made on or after July 1, 2017; SB 582, s. 7.2.(a), S.L. 2017-212.)

Repair, maintenance, and installation services . . . – (61a). This subdivision is amended, in part, and provides the following exemptions: “[t]he sales price of or the

gross receipts derived from the repair, maintenance, and installation services and service contracts listed in this subdivision are exempt from tax. Except as otherwise provided in this subdivision, property and services used to fulfill either a repair, maintenance, or installation service or a service contract exempt from tax under this subdivision are taxable. The list of repair, maintenance, and installation services and service contracts exempt from tax under this subdivision is as follows:

- a. A service and a service contract for an item exempt from tax under . . . Article [5 of Chapter 105 of the General Statutes], except as otherwise provided in this subdivision. Property and services used to fulfill a service or service contract exempt under this sub-subdivision are exempt from tax under . . . Article [5 of Chapter 105 of the North Carolina General Statutes]. This exemption does not apply to water for a pool, fish tank, or similar aquatic feature or to a motor vehicle, except as provided under subdivision (62a) of this section and fees under sub-subdivision b. of this subdivision.
. . .
- p. A security or similar monitoring contract for real property. The exemption provided in this subdivision does not apply to charges for repair, maintenance, and installation services to repair security, alarm, and other similar monitoring systems for real property.
- q. A contract to provide a certified operator for a wastewater system.”

(Effective June 12, 2018; SB 99, s. 38.5.(j), S.L. 2018-5.)

Repair, maintenance, and installation services . . . – (61a). This subdivision is also expanded by adding the following to the exemption: “[t]he sales price of or the gross receipts derived from the repair, maintenance, and installation services and service contracts listed in this subdivision are exempt from tax. Except as otherwise provided in this subdivision, property and services used to fulfill either a repair, maintenance, or installation service or a service contract exempt from tax under this subdivision are taxable. The list of repair, maintenance, and installation services and service contracts exempt from tax under this subdivision is as follows:

. . .

- m. Any of the following:
 - 1. A qualified aircraft.
 - 2. A qualified jet engine.
 - 3. An aircraft with a gross take-off weight of more than 2,000 pounds.”

(Effective July 1, 2019, and applies to sales made on or after that date; SB 628, s. 2.12.(a), S.L. 2017-204.)

Repair, maintenance, and installation services . . . – (61a). This subdivision is also expanded by adding the following to the exemption: “[t]he sales price of or the gross receipts derived from the repair, maintenance, and installation services and service contracts listed in this subdivision are exempt from tax. Except as otherwise provided in this subdivision, property and services used to fulfill either a repair, maintenance, or installation service or a service contract exempt from tax under this subdivision are

taxable. The list of repair, maintenance, and installation services and service contracts exempt from tax under this subdivision is as follows:

...

p. A property management contract."

(Effective January 1, 2020; SB 99, s. 38.5(y), S.L. 2018-5.)

Rental of an accommodation . . . (70). This subdivision is added and provides the following exemption: "[g]ross receipts derived from a rental of an accommodation are exempt as provided in G.S. 105-164.4F."

(Effective June 12, 2018; SB 99, s. 38.5.(j), S.L. 2018-5.)

G.S. 105-164.13E – Exemption for Farmers: The following subsections are either amended or added as follows:

G.S. 105-164.13E(a) – This subsection is amended to include a person who boards horses. This section as amended provides that "[a] qualifying farmer is a person who has an annual income from farming operations for the preceding taxable year of ten thousand dollars (\$10,000) or more or who has an average annual income from farming operations for the three preceding taxable years of ten thousand dollars (\$10,000) or more. For purposes of this section, the term 'income from farming operations' means sales plus any other amounts treated as gross income under the Code from farming operations. A qualifying farmer includes a dairy operator, a poultry farmer, an egg producer, and a livestock farmer, a farmer of crops, a farmer of an aquatic species, as defined in G.S. 106-758, and a person who boards horses. A qualifying farmer may apply to the Secretary for an exemption certificate number under G.S. 105-164.28A. The exemption certificate expires when a person fails to meet the income threshold for three consecutive taxable years or ceases to engage in farming operations, whichever comes first.

Except as otherwise provided in this section, the items exempt under this section must be purchased by a qualifying farmer and used by the farmer in farming operations. For purposes of this section, an item is used by a farmer for farming operations if it is used for the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. The following tangible personal property and services that may be exempt from sales and use tax under this section are as follows:

...

(Effective retroactively to July 1, 2014. A person who paid sales and use tax for the period July 1, 2014 and ending prior to June 12, 2018 on an item exempt from sales and use tax pursuant to G.S. 105-164.13E, as amended, may apply to the Department of Revenue for a refund of any excess tax paid to the extent the refund is the result of the change in G.S. 105-164.13E. A request for a refund must be made on or before October 1, 2018. Notwithstanding G.S. 105-241.6, a request for a refund received after this date is barred and the provisions of G.S. 105-164.11 do not apply. SB 99, s. 38.5.(k), S.L. 2018-5.)

G.S. 105-164.13E(c1) – This subsection is added and provides that “[a] qualifying item listed in G.S. 105-164.13E(a)(6) . . . purchased to fulfill a service for a person who holds a qualifying farmer exemption certificate or a conditional farmer exemption certificate issued under G.S. 105-164.28A is exempt from sales and use tax to the same extent as if purchased directly by the person who holds the exemption certificate. A person that purchases one of the items allowed an exemption under this subsection must provide an exemption certificate to the retailer that includes the name of the purchaser and an exemption number issued to the purchaser by the Department pursuant to G.S. 105-164.28A. A person that purchases an item exempt from tax pursuant to this subsection must maintain records to substantiate that an item is used to provide a service for a person who holds a qualifying farmer exemption certificate or a conditional farmer exemption certificate.”

(Effective retroactively to July 1, 2014. A person who paid sales and use tax for the period July 1, 2014 and ending prior to June 12, 2018 on an item exempt from sales and use tax pursuant to G.S. 105-164.13E, as amended, may apply to the Department of Revenue for a refund of any excess tax paid to the extent the refund is the result of the change in G.S. 105-164.13E. A request for a refund must be made on or before October 1, 2018. Notwithstanding G.S. 105-241.6, a request for a refund received after this date is barred and the provisions of G.S. 105-164.11 do not apply. SB 99, s. 38.5(k), S.L. 2018-5.)

REFUNDS AUTHORIZED FOR CERTAIN PERSONS

G.S. 105-164.14(a) – Interstate Carriers: This subsection is amended to clarify that qualifying items and services purchased by an interstate carrier must be taxable in North Carolina to be eligible for a refund. As amended, this subsection provides, in part, that “[a]n interstate carrier is allowed a refund, in accordance with [G.S. 105-164.14(a)], of part of the sales and use taxes paid by it on the purchase in this State of railway cars and locomotives, and fuel, lubricants, repair parts, accessories, service contracts, and repair, maintenance, and installation services for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An ‘interstate carrier’ is a person who is engaged in transporting persons or property in interstate commerce for compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

“An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

- ...
- (2) The purchase price of the taxable items listed in [G.S. 105-164.14(a)(1)]. For purposes of this subdivision, the term ‘taxable’ is based on the imposition of tax on the items and services in the State.”

(Effective June 12, 2018; SB 99, s. 38.5(l), S.L. 2018-5.)

G.S. 105-164.14A(a)(8) – Transformative Projects: This subdivision allows a refund of sales and use tax as follows: “[a]n owner or lessee of a business that is the recipient of a grant under the Job Development Investment Grant Program on or before June 30, 2019, for a transformative project as defined in G.S. 143B-437.51(9a) is allowed a refund of the sales and use tax paid by it on building materials, building supplies, fixtures, and equipment that become a part of the real property of the facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner.”

G.S. 143B-437.51(9a) as amended defines a “transformative project” as “[a] project for which the agreement requires that a business invest at least one billion dollars (\$1,000,000,000) in private funds and create at least 3,000 eligible positions.”

(Effective June 12, 2018; SB 99, s. 15.1.(a), S.L. 2018-5.)

OTHER PROVISIONS

G.S. 105-164.15A(b) – Combined General Rate Items: The title of this subsection is amended to correct the language to the defined term “combined general rate .”

(Effective June 12, 2018; SB 99, s. 38.5.(m), S.L. 2018-5.)

G.S. 105-164.19 – Extension of Time for Making Returns and Payment: This section is rewritten and provides that “[t]he Secretary for good cause may extend the time for filing any return under the provisions of . . . Article [5 of Chapter 105 of the North Carolina General Statutes] and may grant additional time within which to file the return and pay the tax due pursuant to G.S. 105-263(b).”

(Effective June 12, 2018; SB 99, s. 38.5.(n), S.L. 2018-5.)

G.S. 105-164.22 – Record-Keeping Requirements, Inspection Authority, and Effect of Failure to Keep Records: This section is amended, in part, to clarify the records consumers must keep and provides that “[a] consumer’s records must include an invoice or other statement of the purchase price of an item the consumer purchased from inside or outside the State.”

(Effective June 12, 2018; SB 99, s. 38.5.(t), S.L. 2018-5.)

G.S. 105-164.27A(a) – General: This subsection is amended and provides that “[a] general direct pay permit authorizes its holder to purchase certain tangible personal property, digital property, or service without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A general direct pay permit may not be used for purposes identified in subsections (a1), (a2), (a3), or (b) of this section. A person who purchases an item under a direct pay permit issued under this subsection is liable for use tax due on the purchase. The tax is payable when the property is placed in use or the service is received. A direct pay permit issued under

this subsection does not apply to taxes imposed under G.S. 105-164.4 on sales of electricity, piped natural gas, video programming, spirituous liquor, or the gross receipts derived from rentals of accommodations.

A person who purchases an item for storage, use, or consumption in this State whose tax status cannot be determined at the time of the purchase because of one of the reasons listed below may apply to the Secretary for a general direct pay permit:

- (1) The place of business where the item will be stored, used, or consumed in the State is not known at the time of the purchase and a different tax consequence applies depending on where the item is used in the State.
- (2) The manner in which the item will be stored, used, or consumed in the State is not known at the time of the purchase and one or more of the potential uses is taxable but others are not taxable in the State."

(Effective June 12, 2018; SB 99, s. 38.5.(o), S.L. 2018-5.)

G.S. 105-164.32 – Incorrect Returns; Estimate: This section is amended to add the defined term “facilitator” and provides that “[i]f a retailer, a wholesale merchant, a facilitator, or a consumer fails to file a return and pay the tax due under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] or files a grossly incorrect or false or fraudulent return, the Secretary must estimate the tax due and assess the retailer, the wholesale merchant, the facilitator, or the consumer based on the estimate.”

(Effective June 12, 2018; SB 99, s. 38.5.(p), S.L. 2018-5.)

G.S. 105-164.44M – Transfer to Division of Aviation: This section is amended to clarify that the “[a]mount . . . annually appropriated from the Highway Fund to the Division of Aviation of the Department of Transportation [is] for prioritized capital improvements to general aviation airports for time-sensitive aviation capital improvement projects for economic development purposes.”

(Effective January 1, 2018, and applies to sales made on or after that date; SB 257, s. 34.21.(a), S.L. 2017-57.)

SPECIAL PROVISIONS

G.S. 105-244.3 – Sales Tax Base Expansion Protection Act: This section is amended and provides additional and extended relief from sales and use taxes due to the expansion of the sales tax base. The following explains the protections provided by the Act.

- “(a) Grace Period – The Department shall take no action to assess any tax due for a filing period beginning on or after March 1, 2016, and ending *prior to January 1, 2019*, if one or more of the conditions of this subsection apply and the retailer did not receive specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable periods. *Except as otherwise*

provided, this subsection also applies to use tax liability imposed on a purchaser under G.S. 105-164.6. The conditions are as follows:

- (1) A retailer failed to charge sales tax due on separately stated installation charges that are part of the sales price of tangible personal property or digital property sold at retail.
- (2) A person failed to properly classify themselves as a retailer in retail trade for the period beginning March 1, 2016, and ending December 31, 2016, and did not charge sales tax on all retail transactions but rather treated some transactions as real property contracts in error for sales and use tax purposes. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a transaction erroneously treated as a real property contract.
- (3) A person treated a transaction as a real property contract in error and did not collect sales tax on the transaction as a retail sale. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a transaction erroneously treated as a real property contract.
- (4) A person failed to collect sales tax on the sales price of a service contract for one or more components, systems, or accessories for a motor vehicle on or after March 1, 2016, and prior to January 1, 2017, where the contract was sold by a motor vehicle dealer, a motor vehicle service agreement company, or a motor vehicle dealer on behalf of a motor vehicle service agreement company.
- (5) A person failed to collect sales tax on the retail sale of a service contract for tangible personal property that becomes a part of or is affixed to real property.
- (6) A person failed to collect sales tax on the retail sale of a service contract for a pool, a fish tank, or similar aquatic feature on or after January 1, 2017, and prior to *January 1, 2019*, provided the person paid tax on any purchases used to fulfill the service contract.
- (7) A person failed to collect sales tax on the sales price of or the gross receipts derived from the retail sale of a home warranty on or after January 1, 2017, and prior to *January 1, 2019*, provided the warranty includes coverage for real property.
- (8) A person failed to collect sales tax on the *taxable* portion of a mixed service contract that exceeds ten percent (10%) for a transaction *on or after January 1, 2017, and prior to January 1, 2019*. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a mixed contract.
- (8a) *A person failed to collect sales tax on the taxable portion of a mixed transaction contract that exceeds twenty-five percent (25%) for a transaction on or after January 1, 2017, and prior to January 1, 2019. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a mixed transaction contract.*
- (8b) *A person failed to collect sales tax on the taxable portion of a bundled transaction that included a contract for two more services, one of which*

was subject to tax and one of which was not subject to tax, for a transaction on or after March 1, 2016, and prior to January 1, 2017.

- (9) A person treats a transaction as a real property contract for remodeling instead of the retail sale of repair, maintenance, and installation services sold at retail prior to *January 1, 2019*. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill the transaction.
 - (10) *A person failed to collect sales tax on repair, maintenance, and installation services for tangible personal property, motor vehicles, and digital property. [Emphasis added]*
- (b) Limitations. – This section does not prohibit the following assessments:
- (1) The assessment of tax collected by a person and not remitted to the Department.
 - (2) The assessment of tax due on an amount included in the definition of sales price where a retailer failed to charge or remit the tax, except as allowed under subsection (a) of this section.
 - (3) The assessment of use tax on purchases as provided in subsection (a) of this section.”

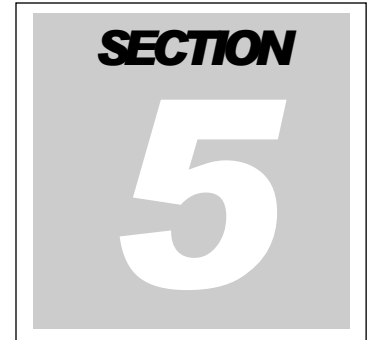
(Subsection (a) of this section becomes effective retroactively to January 1, 2017, and expires on July 1, 2018; SB 628, s. 2.12.(a); S.L. 2017-204. Effective June 12, 2018; S.B. 99, s. 38.5.(q), S.L. 2018-5 amends subsection (a) and sub-subsections (6), (7), (8) and (9), and adds sub-subsections (8a), (8b) and (10).)

LOCAL SALES AND USE TAX

G.S. 105-471 – Retailer to Collect Sales Tax: This section is amended to modernize and conform the language to the provisions of Article 5 of Chapter 105 of the North Carolina General Statutes. Additionally, superfluous language is deleted.

(Effective June 12, 2018; SB 99, s. 38.5.(w), S.L. 2018-5.)

HIGHWAY USE TAX

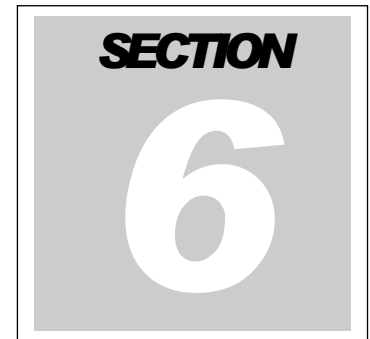


HIGHWAY USE TAX – ARTICLE 5A

G.S. 105-187.6(a)(12) – Exemption from Highway Use Tax: This subdivision is added and provides an exemption from highway use tax “when a certificate of title issued as the result of a transfer of a motor vehicle [t]o a charitable organization operating under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)) where the vehicle was donated to the charitable organization solely for purposes of resale by the charitable organization.”

(Effective June 22, 2018; S.B. 412, s. 5., S.L. 2018-43.)

CERTAIN MACHINERY AND EQUIPMENT



CERTAIN MACHINERY AND EQUIPMENT– ARTICLE 5F

Certain Machinery and Equipment – The entirety of Article 5F, Certain Machinery and Equipment, of Chapter 105 of the North Carolina General Statutes is repealed.

Effective July 1, 2018, sales and purchases of qualifying mill machinery, mill machinery parts or accessories, and other items for specific industries included in Article 5F are no longer subject to the one percent (1%) privilege tax. The final Form E-500J, Machinery and Equipment Tax Return, should be filed for the month ending June 30, 2018 or the quarter ending June 30, 2018, depending on the existing filing frequency for the account number. The Department will programmatically close all active Certain Machinery and Equipment accounts as of June 30, 2018 in its system; therefore, the Form NC-BN, Out-of-Business Notification, is not required to be submitted along with the final return for a filing period ending June 30, 2018.

See the sales and use tax exemptions under G.S. 105-164.13(5e) through (5n) under the Sales and Use Tax section of this publication for additional information.

(Effective July 1, 2018, and applies to sales made on or after that date; SB 257, s. 38.8.(a), S.L. 2017-57.)

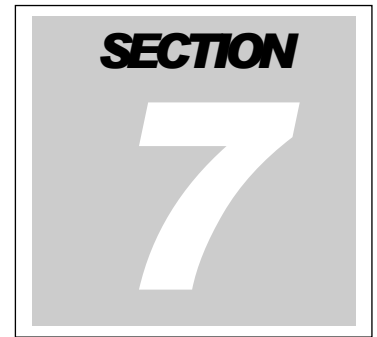
G.S. 105-187.52(c) – Administration Exemption: This subsection is amended to update a statutory reference and provides that “State agencies are exempted from the privilege taxes imposed by . . . Article [5F of Chapter 105 of the North Carolina General Statutes]. The exemption in G.S. 105-164.13(62) does not apply to an item used to maintain or repair tangible personal property pursuant to a service contract exempt from tax under *G.S. 105-164.13(61a)a.*” [Emphasis added.]

(Effective June 12, 2018, S.B. 99, s. 38.5.(r), S.L. 2018-5.)

G.S. 105-187.52(c) – Administration Exemption: This subsection is repealed effective July 1, 2018.

(Effective July 1, 2018, and applies to sales made on or after that date; SB 257, s. 38.8.(a), S.L. 2017-57.)

LOCAL GOVERNMENT



LOCAL GOVERNMENT

G.S. 105-275 – Property Classified and Excluded from the Tax Base:

G.S. 105-275(31) – Excluded from taxation all leasehold interests in exempt real property, some of which were previously taxable.

G.S. 105-275(31e) – Because the above change to subsection (31) applies to all leasehold interests in exempt real property, the exclusion previously offered by subsection (31e) is no longer necessary. Repealed prior exclusion from taxation of a leasehold interest in “real property that is exempt under G.S. 105-278.1 and is used to provide affordable housing for employees of the unit of government that owns the property.”

(Effective July 1, 2019; SB 561; s. 1.(a), S.L. 2018-93)

G.S. 105-275(46) – Excluded from taxation personal property that is “occupied (sic) by a charter school and is wholly and exclusively used for educational purposes as defined in G.S. 105-278.4(f)...”

G.S. 105-275(49) – Expanded the property tax exclusion for mobile classrooms or modular units “occupied by a school and is wholly and exclusively used for educational purposes, as defined in G.S. 105-278.4(f)...” to include both nonprofit and for-profit charter schools.

(Effective July 1, 2018; HB 374; s. 25.(a), S.L. 2018-114)

G.S 105-277.15 – Taxation of Wildlife Conservation Land:

105-277.15(c)(3)(a.)(3): Section 277.15 provides for alternate valuation of qualifying properties. The amendment expanded qualifying uses of property to include property for which the owner, by agreement with the North Carolina Wildlife Resources Commission, is required to:

Create and actively and regularly use as a reserve for hunting, fishing, shooting, wildlife observation, or wildlife activities, provided that the land is inspected by a certified wildlife biologist at least quintennially to

ensure that at least three of the seven activities listed in this sub-sub-subdivision are maintained to propagate a sustaining breeding, migrating, or wintering population of indigenous wild animals for human use, including food, medicine, or recreation. The Commission shall adopt rules needed to administer the inspection requirements of and activities mandated by this sub-sub-subdivision.

- I. Supplemental food.
- II. Supplemental water.
- III. Supplemental shelter.
- IV. Habitat control.
- V. Erosion control.
- VI. Predator control.
- VII. Census of animal population on the land.

105-277.15(d)(1) was amended to expand to 800 acres the maximum amount of land that may qualify under the provisions of (c)(3)(a.) (3).

(Effective date July 1, 2019; HB320; s. 1, S.L. 2018-95)

G.S. 105-278.2 – Burial Property:

105-278.2(a) was amended to clarify that no application or survey is required in order to qualify for the exemption

(Effective upon becoming law, June 27, 2018; SB711; s. 15, S.L. 2018-113)

**G.S. 105-282.1 – Applications for Property Tax Exemption or Exclusion;
Annual Review of Property Exempted or Excluded from Property Tax:**

Amended 105-282.1(2)(b) to provide that only a single (rather than annual) application is required for participation in the following exclusion programs provided under G.S.

105-275:

- | | |
|-------------|---|
| 105-275(45) | Solar energy electric systems |
| 105-275(46) | Real property occupied by a charter school |
| 105-275(47) | Certain energy mineral interests in property |
| 105-275(48) | Real and personal property located on lands held in trust by the United States for the Eastern Band of Cherokee Indians |
| 105-275(49) | School mobile/modular classrooms |

(Effective upon becoming law, June 12, 2018; SB99; s. 38.10(d), S.L. 2018-5)

G.S. 105-317.1 – Appraisal of Personal Property; Elements to be Considered

Added 105-317.1(b1) to require NCDOR to publish a depreciation schedule for farm equipment, and provides that counties using the cost approach to value farm equipment must also use the depreciation schedule published by NCDOR.

(Effective date July 1, 2019; SB711; s. 14(a), S.L. 2018-113)

G.S. 105-320 – Tax Receipts; Preparation:

Repealed 105-320(b), an obsolete provision.

(Effective upon becoming law, June 12, 2018; SB99; s. 38.10(i), S.L. 2018-5)

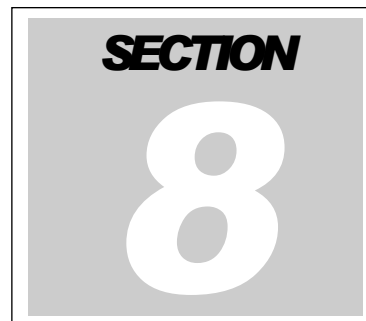
G.S. 105-395.1 – Applicable Date When Due Date Falls on Weekend or Holiday:

In addition to Saturdays, Sundays, and holidays, a due date is now extended to the next business day when all of the following occur on a due date:

- a. The tax office is closed;
- b. The taxpayer certifies in writing that the United States Postal Service did not provide service to the taxpayer's address; and
- c. A disaster declaration is declared pursuant to G.S. 166A-19.21 or G.S. 166A-19.22.

(Effective date July 1, 2018; SB99; s. 38.9(a), S.L. 2018-5)

GENERAL ADMINISTRATION



GENERAL ADMINISTRATION – ARTICLE 9

G.S. 105-228.90(b)(1b) – Scope and Definitions: Definitions: Code: State law defines the Internal Revenue Code as the Code enacted as of a certain date. When the General Statute’s reference date to the Code is updated, North Carolina conforms to federal law that has been enacted as of that specified date, except for any specific adjustments to the Code that are required by State law.

This subdivision was amended to update the reference to the Internal Revenue Code from January 1, 2017 to February 9, 2018.

(Effective June 12, 2018; SB 99, s. 38.1(a), S.L. 2018-5.)

G.S. 105-228.90(b)(3a) – Scope and Definitions: Definitions: Federal Determination: Subsection (b) of G.S. 105-228.90 was amended to add new subdivision (3a) as part of a series of changes to the State’s federal corrections statutes, which are statutes that address a taxpayer’s filing obligation when the taxpayer’s federal taxable income is changed or corrected at the federal level. As amended and specifically provided in G.S. 105-228.90(b)(3a), a federal determination is a change or correction of the amount of federal tax due arising from an audit by the Commissioner of the Internal Revenue.

(Effective June 12, 2018; SB 99, s. 38.3(g), S.L. 2018-5.)

G.S. 105-230(b) – Charter Suspended for Failure to Report: This subsection was rewritten to clarify that the imposition of a revenue suspension on a corporation or a limited liability company done by the Secretary of State at the direction of the Department of Revenue, does not relieve the suspended entity for accrued, current, or subsequent taxes. The tax liability and compliance obligations remain unaffected by the suspension.

(Effective June 12, 2018; SB 99, s. 38.10(a), S.L. 2018-5.)

G.S. 105-236(a)(10) – Penalty for Failure to File Informational Returns: This subdivision was amended as part of a series of changes to the State’s informational return statutes to impose specific penalties with regard to certain informational returns.

As enacted, the penalties apply to informational returns required by Article 4A (Withholding Tax), Article 5 (Sales and Use Tax), Article 9 (General Administration: Penalties and Remedies), Article 36C (Gasoline, Diesel, and Blends), and Article 36D (Alternative Fuel).

Sub-subdivision (b) was recodified as G.S. 105-163.7(d). Sub-subdivision (c) was amended to modify an existing penalty for failure to file an informational return. As amended and specifically stated in G.S. 105-236(a)(10)(c), the Secretary shall assess a penalty of fifty dollars (\$50.00) per day, up to a maximum penalty of one thousand dollars (\$1,000) against a taxpayer that fails to file an informational return by the date the informational return is due. Sub-subdivision (d) was added to create a new informational return penalty. As enacted, G.S. 105-236(a)(10)(d) imposes a penalty of two hundred dollars (\$200) against a taxpayer that fails to file an informational return in the format prescribed by the Secretary.

(Effective June 12, 2018; SB 99, s. 38.10(p), S.L. 2018-5.)

G.S. 105-236 – Penalties: Situs of Violations: Penalty Disposition: This subsection was rewritten to provide that “Civily, a violation of a tax is considered an act committed in part at the office of the Secretary in Raleigh. Criminally, a violation of tax law shall NOT be considered an act committed at the office of the Secretary in Raleigh. The District Attorney of the county where the charged offense occurred shall have sole jurisdiction to prosecute violations of tax law, but the Attorney General shall have concurrent jurisdiction in such prosecutions if the District Attorney requests, in writing, that the Attorney General prosecute the violation.”

(Effective December 1, 2018 and applies to offenses committed on or after that date; SB 561, s. 2(a), S.L. 2018-98.)

G.S. 105-237.1(a)(6) – Compromise of Liability: As amended, this subdivision permits the Secretary to compromise a taxpayer’s liability if the taxpayer is a retailer or a person under Article 5 of Chapter 105; the assessment is for sales or use tax the retailer failed to collect or the person failed to pay on an item taxable under G.S. 105-164.4(a)(10) through (a)(15), and the retailer or person made a good-faith effort to comply with the sales and use tax laws. This subdivision applies to assessments for any tax due for a reporting period ending prior to July 1, 2020.

(Effective June 12, 2018; SB 99, s. 38.10.(c), S.L. 2018-5.)

G.S. 105-241.01 – Electronic Filing of Returns: This section was added to provide a framework for the Department to offer and prescribe the format for electronic filing. The new statutes are explained below.

Subsection (a) of new G.S. 105-241A explains the purpose for the new statutes, acknowledging that the various statutes within Chapter 105 of the General Statutes were originally drafted for the use of paper returns submitted to the Department either personally or through the mail. The General Assembly finds that through technological

advances, there are many methods by which tax returns can be filed electronically that can be processed more efficiently by the Department, are easier and more convenient for taxpayers, improve the accuracy of the return, and are safer to use with respect to identity theft. The General Assembly also recognized that the Secretary must have the flexibility to provide specific guidance to taxpayers on how to file tax returns electronically in order to improve the process and reduce the costs of and the time to process tax returns.

Subsection (b) requires the Department to offer electronic filing for tax returns if the Department determines that electronic filing is cost-effective. The Department is also required to establish and implement electronic filing procedures.

Subsection (c) requires the Department to prescribe the format for electronic filing, including how a taxpayer or preparer of a tax return can sign an electronically filed return.

Subsection (d) provides the Secretary with the authority to waive any electronic submission requirement for returns filed electronically under Chapter 105.

Subsection (e) requires the Department to publish annually on the Department's website a list of returns that are required to be filed electronically and those that are permitted to be filed electronically during the next calendar year. The list is required to be published by December 1 of each year.

(G.S. 105-241.01 was recodified from the original Session Law. Originally, this section was enacted as G.S. 105-241A).

(Effective June 12, 2018; SB 99, s. 38.10(r), S.L. 2018-5.)

G.S. 105-241.8(b)(1a) – Statute of Limitations for Assessments: This section was amended as part of a series of changes to the State's federal corrections statutes, which are statutes that address a taxpayer's filing obligation when the taxpayer's federal taxable income is changed or corrected at the federal level and the change affects the amount of State tax payable.

As enacted, subdivision (1a) provides an exception to the general statute of limitations for assessments proposed from adjustments voluntarily filed with the Internal Revenue Service that affect State tax payable. As amended and specifically provided in G.S. 105-241.8(b)(1a), if a taxpayer files a State amended return as a result of filing a federal amended return and the amended return is filed within the time required by statute, the period for proposing an assessment of any tax due is one year after the amended return is filed or three years after the original return was filed or due to be filed, whichever is later. If the taxpayer does not file the State amended return within the required time, the period for proposing an assessment of any tax due is three years after the date the federal amended return was filed with the Internal Revenue Service.

(Effective June 12, 2018 and applies to federal amended returns filed on or after that date; SB 99, s. 38.3(e), S.L. 2018-5.)

G.S. 105-241.10 – Limit on Refunds and Assessments after a Federal

Determination: This section was amended to incorporate reference to the definition of a federal determination codified in G.S. 105-228.90(b)(3a).

(Effective June 12, 2018 and applies to federal amended returns filed on or after that date; SB 99, s. 38.3(f), S.L. 2018-5.)

G.S. 105-242.2(a)(1) – Personal Liability When Certain Taxes Not Paid:

Definitions: This subdivision was amended to clarify that a business entity, which is defined as a corporation, a limited liability company, or a partnership, continues to be defined as a business entity regardless of whether the entity is suspended under G.S. 105-230, or is dissolved under Article 14 of Chapter 55 of the General Statutes or under Article 6 of Chapter 57D of the General Statutes.

(Effective June 12, 2018; SB 99, s. 38.10(b), S.L. 2018-5.)

G.S. 105-244.3 – Sales Tax Base Expansion Protection Act: This section was amended and provides certain additional and extended relief from sales and use taxes due to the expansion of the sales tax base. A complete explanation is located under Special Provisions of the Sales and Use Tax section of this document.

(Effective June 12, 2018; SB 99, s. 38.5.(q), S.L. 2018-5.)

G.S. 105-251.2 – Compliance Information Requests: Subsection (b) of this section was amended to correct a typographical error. Subsection (d) was amended to strike the failure to file penalty language because the penalty language was recodified as G.S. 105-236(a)(10)(c).

(Effective June 12, 2018; SB 99, s. 38.10(o), S.L. 2018-5.)

G.S. 105-259(b)(50) – Disclosure Prohibited: This subdivision was rewritten to add the physical address of tobacco product licensees to the list of information permitted for disclosure in the public access list allowed by the subdivision. As tobacco product licensees are required to obtain a separate license for each place of business, without disclosure of the physical address of each license, a user of the public access list cannot discern if a particular location is in fact licensed.

(Effective June 12, 2018; SB 99, s. 38.6(e), S.L. 2018-5.)

G.S. 105-259(b)(55) – Disclosure Prohibited: This subdivision was added to allow the Department to provide to the Office of Recovery and Resiliency data drawn from State tax information for the purpose of facilitating a taxpayer’s application for means-tested federal or state relief related to a federal major disaster declaration. As written, the Department may not disclose federal tax information to the Office of Recovery and Resiliency unless the disclosure is permitted under section 6103 of the Internal Revenue Code.

(Effective October 16, 2018; SB 3, s. 5.17(a), S.L. 2018-136.)

G.S. 105-259(b1) – Disclosure Prohibited: This subsection was added to allow the Department, consistent with the requirements of G.S. 105-259, to maintain secrecy of tax information, determine when, how, and under what conditions the disclosure of tax information authorized shall be made. As enacted and specifically stated, the Secretary is solely responsible for determining whether information security protections for systems or services that store, process, or transmit State or federal tax information are adequate, and the Secretary is not required to use any systems or services determined to be inadequate.

(Effective June 12, 2018; SB 99, s. 38.10(q), S.L. 2018-5.)

G.S. 105-263 – Timely Filing of Mailed Documents and Requests for Extensions: For tax years beginning prior to January 1, 2019, the Department required all taxpayers to timely submit a State extension application form to receive an extension of time to file a State income or franchise tax return. The Department did not accept a federal extension form in lieu of the North Carolina extension. The amendments to this section provide a method by which a taxpayer that is granted an automatic extension to file a federal income tax return is granted an automatic extension to file a State income and franchise tax return. As amended, a person who is granted an automatic extension to file a federal income tax return, including a return of partnership income, is granted an automatic extension to file the corresponding State income tax return and franchise tax return. The person must certify on the North Carolina return that the person was granted a federal extension.

(Effective for taxable years beginning on or after January 1, 2019; SB 99, s. 38.4(a), S.L. 2018-5.)

G.S. 105-263(d) – Timely Filing of Mailed Documents and Requests for Extensions: Electronic Documents: New subsection (d) was added to this section to authorize the Secretary to prescribe when an electronically filed return, report, payment, or any other document submitted to the Department is considered timely filed.

(G.S. 105-263(d) was recodified from the original Session Law. Originally, this subsection was enacted as G.S. 105-263(c).

(Effective June 12, 2018; SB 99, s. 38.10(q), S.L. 2018-5.)